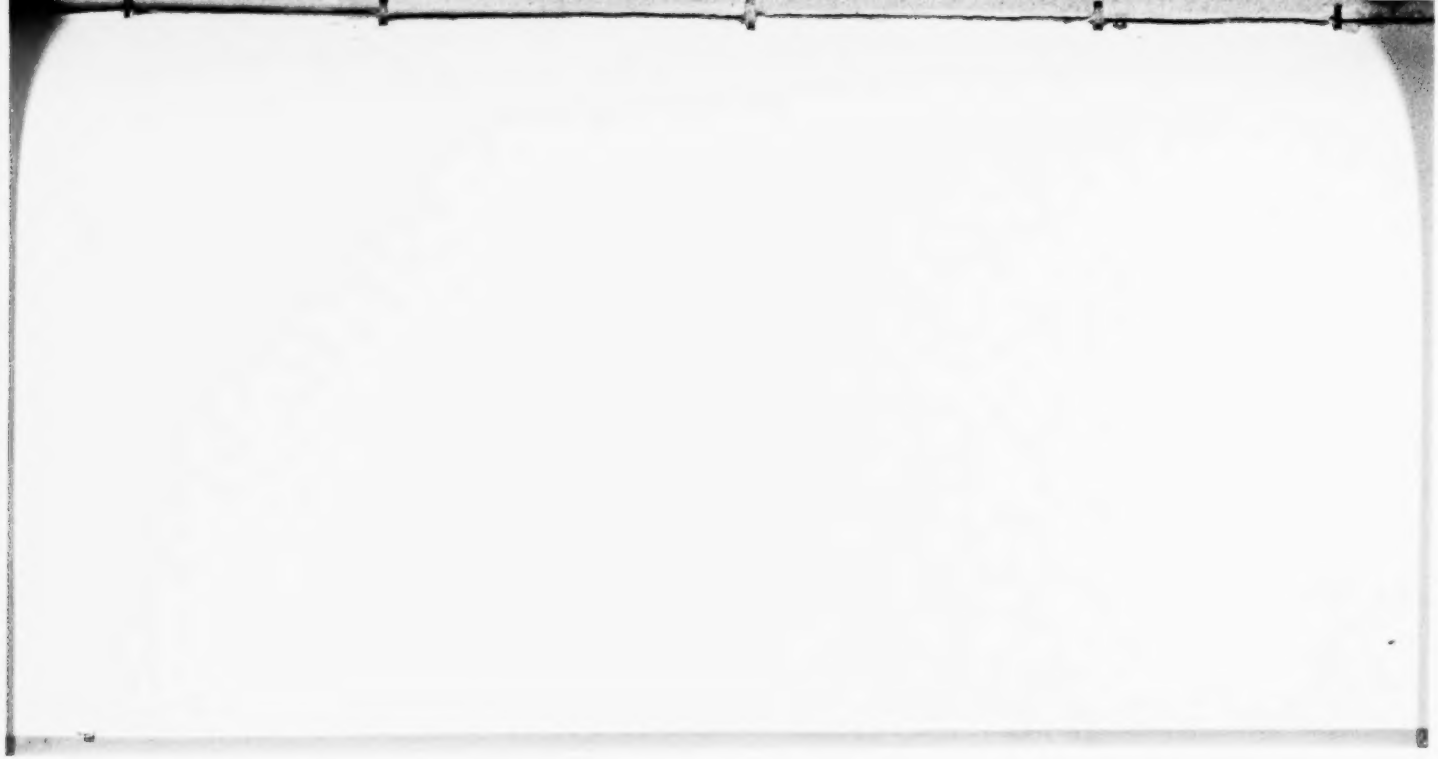

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 275.

LONE WOLF, PRINCIPAL CHIEF OF KIOWAS; ESHITIE, PRINCIPAL CHIEF OF COMANCHES; WHITE BUFFALO, KO-KOY-TAUDLE, MAR-MO-SOOK-CAR-WER, NARWATS, TOO-WI-CAR-NE, WILLIAM TIVIS, AND DELOS K. LONE-WOLF, APPELLANTS,

vs.

ETHAN A. HITCHCOCK, SECRETARY OF THE INTERIOR; WILLIAM A. JONES, COMMISSIONER OF INDIAN AFFAIRS, AND BINGER HERMANN, COMMISSIONER OF THE GENERAL LAND OFFICE.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED MARCH 18, 1902.

(18,454.)

29990

(18,454.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 601.

ONE WOLF, PRINCIPAL CHIEF OF KIOWAS; ESHITIE, PRINCIPAL CHIEF OF COMANCHES; WHITE BUFFALO, KO-KOY-TAUDLE, MAR-MO-SOOK-CAR-WER, NARWATS, TOO-WI-CAR-NE, WILLIAM TIVIS, AND DELOS K. LONE-WOLF, APPELLANTS,

vs.

THAN A. HITCHCOCK, SECRETARY OF THE INTERIOR; WILLIAM A. JONES, COMMISSIONER OF INDIAN AFFAIRS, AND BINGER HERMANN, COMMISSIONER OF THE GENERAL LAND OFFICE.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

LONE WOLF ET AL., Appellants,
vs.
ETHAN A. HITCHCOCK ET AL. } No. 1109.

a Supreme Court of the District of Columbia.

LONE WOLF, Principal Chief of Kiowas; Eshitie, Principal Chief of Comanches; White Buffalo, Ko-Koy-Taudle, Mar-Mo-Sook-Car-Wer, Narwats, Too-Wi-Car-Ne, William Tivis, and Delos K. Lonewolf
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior; William A. Jones, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office. } No. 22338. In Equity.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill of Complaint.*

Filed Jun- 6, 1901.

In the Supreme Court of the District of Columbia, June Term, 1901.

LONE WOLF, who Sues as well for Himself as all Other Members of the Confederated Tribes of the Kiowa, Comanche, and Apache Indians Residing in the Territory of Oklahoma, Complainant,
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior; William A. Jones, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office, Respondents. } No. 22338. In Equity.

To the honorable the chief justice and the associate justices of the supreme court of the District of Columbia:

Your orator, Lone Wolf, who sues as well for himself as all other members of the confederated tribes of Kiowa, Comanche, and Apache

Indians residing in the Territory of Oklahoma, respectfully represents that he is now and always has been a member of the Kiowa tribe of Indians, which is now united with the Comanche and Apache tribes, and that he resides in the said Territory of Oklahoma and has so resided since said tribes were located in said Territory, in the year 1868, then known as the Indian Territory, and that all of said confederated tribes reside in the said Territory and have so resided therein since said year 1868; that said confederated
2 tribes keep up their tribal organizations in said Territory and have so kept up said tribal organizations in said Territory for many years for the transaction of all the business of said tribes.

Your orator further states that he brings this suit as well for himself as all other members of the said confederated tribes of Indians, residing in said Territory whose lands, amounting to nearly three million acres, are situated in said Territory of Oklahoma; that the question of the allotment of their said lands in part and the sale of their surplus lands and the treaties by which said lands are held is one of common and general interest to all the members of the said confederated tribes of Kiowa, Comanche, and Apache Indians residing in said Territory, and that the members of the said confederated tribes residing in said Territory and against whom it is threatened by the said respondents to enforce the provisions of certain pretended acts of Congress, which are unconstitutional and void and which will deprive said confederated tribes of their lands without their consent and against their repeated protests, are very numerous—in fact, nearly three thousand in number—and it would be impracticable to bring them all before this honorable court. Your orator therefore brings this his bill, as well for himself as all other members of said confederated tribes of Indians residing in the said Territory of Oklahoma, against the said Ethan A. Hitchcock, Secretary of the Interior; William A. Jones, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office, each and all of them being citizens of the United States, residing in the said District of Columbia.

And thereupon your orator complains and says that prior to the year 1868 the said Kiowa, Comanche, and Apache tribes of
3 Indians owned and were in possession of large tracts of country in the State of Kansas and elsewhere, and that the United States Government was desirous of purchasing said lands by exchanging other lands therefor; that to this end a treaty was concluded at the council camp on Medicine Lodge creek, in the State of Kansas, October 21, 1867, by the Kiowa and Comanche tribes of Indians with the United States, which was proclaimed August 25, 1868, by which, for and in consideration of the advantages and benefits conferred by said treaty, the following district of country, to wit:

"Commencing at a point where the Washita river crosses the 98th meridian west from Greenwich, thence up the Washita river, in the middle of the main channel thereof, to a point thirty miles by river west of Fort Cobb as now established; thence due west to

the north fork of Red river, provided said line strikes said river east of the one-hundredth meridian of west longitude; if not, then only to said meridian line, and thence south on said meridian line to the said north fork of Red river; thence down said north fork, in the middle of the main channel thereof, from the point where it may be first intersected by the lines above described to the main Red river; thence down said river, in the middle of the main channel thereof, to its intersection with the ninety-eight- meridian of longitude west from Greenwich; thence north on said meridian line to the place of beginning,"

was set apart for the absolute and undisturbed use and occupation of the Kiowa and Comanche tribes of Indians, and for such other friendly tribes or individual Indians as from time to time they (the said tribes) may be willing, with the consent of the United States, to admit among them; and the United States then solemnly

4 agreed by the terms of said treaty that no person, except those therein authorized so to do, and except such officers, agents, and employés of the Government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, should ever be permitted to pass over, settle upon, or reside in the territory described in said treaty and above set forth or in such territory as may be added to said reservation for the use of said Indians (15 U. S. Stats., pp. 581–587); that at the said time and place, to wit, on the 21st day of October, 1867, a supplemental treaty was concluded between said Kiowa and Comanche tribes and the Apache tribe of Indians and the United States, which was proclaimed on the said 25th day of August, 1868, by the terms of which the said Apache tribe of Indians agreed to confederate and become incorporated with the said Kiowa and Comanche Indians, and to accept as their permanent home the reservation described in the aforesaid treaty with the Kiowa and Comanche tribes, concluded, as aforesaid, at the said time and place, and said Apache Indians in said supplemental treaty pledged themselves to make no permanent settlement at any place nor on any lands outside of said reservation.

And the said Apache tribe of Indians, by the provisions of said supplemental treaty and in consideration of the advantages conferred thereby upon said tribe, agreed to observe and faithfully comply with all the stipulations and agreements entered into by the Kiowas and Comanches in said first-named treaty, and to do and perform all other things enjoined upon said tribes by the provisions of said first-named treaty, and said Apache tribe of Indians, by the said provisions of said supplemental treaty, gave up and forever relinquished to the United States all rights, privileges, and grants then vested in them or intended to be transferred to

5 them by the provisions of other treaties between the United States, themselves, and other Indian tribes (15 U. S. Stats., pp. 589–592).

That the eleventh article of said first-named treaty between the Kiowa and Comanche tribes and the United States was to the effect

that in consideration of the advantages and benefits conferred by said treaty and the many pledges of friendship by the United States, the tribes who are parties of said treaty expressly stipulated, among other things, that they would relinquish all right to occupy permanently the territory outside of their reservation as defined in said treaty, and said tribes further expressly agreed that they would withdraw all opposition to the construction of certain railroads mentioned therein, and not to attack white persons or wagon trains, coaches, or cattle belonging to the people of the United States, and to withdraw all opposition to the establishment of military posts in the Western Territories.

That by the twelfth article of said first-mentioned treaty it was provided as follows:

"ARTICLE 12. No treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force as against the said Indians, unless executed and signed by at least three-fourths of all the adult male Indians occupying the same, and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract of land selected by him as provided in article III (VI) of this treaty."

6 That the said article six of said treaty, to which reference is made in said article twelve, provided that if any individual belonging to said tribes of Indians, being the head of a family, should desire to commence farming he shall have the privilege to select a tract of land within said reservation, not exceeding 320 acres in extent, which when settled should cease to be held in common; but the same was to be held in the exclusive possession of the person selecting it and his family so long as he or they may continue to cultivate it.

Your orator further represents unto your honors that after the said ratification and promulgation of said treaties the said Kiowa, Comanche, and Apache tribes of Indians removed to and settled upon the said reservation, and that they have resided thereon from said time hitherto and still continue to reside thereon; that they have faithfully kept on their part all the promises and agreements contained in said treaties; that they have never agreed or consented to relinquish their right to occupy said lands contained in said reservation or signed any treaty for that purpose, as provided in article twelve of said first-named treaty; that in the year 1892 a commission composed of David H. Jerome, Alfred M. Wilson, and Warren G. Sayre, claiming to represent the United States, came to Fort Sill, on said reservation, and sent out for and brought before them certain members of said Kiowa, Comanche, and Apache tribes of Indians, to whom certain false and fraudulent representations were made, whereby 456 members of said tribes were induced to sign a paper, which they were informed was a treaty or agreement with the United States in reference to their lands, which paper is known as the Jerome treaty; that one Joshua Given, a Kiowa Indian

who had intermarried with a white woman, and one Edward L.
7 Clark, a white man, acted as interpreters and assumed to translate said treaty or agreement, but that instead of faithfully and truly translating said treaty they falsely and fraudulently misrepresented the provisions of said treaty, so that as signed it did not express the wishes of said Indians; that the name of the wife of said Given and the name of said Clark were inserted in said treaty and they were adopted into the tribe and made equal with the Indians in sharing the lands of the tribe; that a provision was inserted in said Jerome treaty or agreement to the effect that Hugh L. Scott, an officer of the United States army then stationed at said Fort Sill, and George D. Day, the United States Indian agent on said reservation, and five other white men named therein should each be entitled to 160 acres of land in said reservation, which were to be allotted to them by the provisions of said treaty; that your orator did not know when he signed said treaty that said persons were mentioned therein; that said Agent Day falsely represented to the Interior Department that there were only 562 adult male members of said tribes, and that the 456 names of adult male members who signed said treaty were more than three-fourths of all the adult male members of said tribes; that afterwards the Secretary of the Interior caused a census of said Indians to be taken for the purpose of making a *per capita* payment to said Indians, and he reported to Congress on the 13th day of January, 1900, that at or about that time there were 639 male members of said tribes over the age of 21 years, and that the number who signed said treaty was 23 less than three-fourths of all the adult male members of said tribes. See Senate Document No. 76, first session, 56th Congress, in which docu-
8 ment said respondent, Ethan A. Hitchcock, then and now Secretary of the Interior, reported officially to Congress as follows:

"It therefore seems that besides wil-ful/ misrepresentation and false translations to the Indians, as charged, to influence their action and induce them to sign the agreement, that the department was also misled as to the actual number of adult male Indians in the tribes." The said respondent then called the attention of Congress to the said 12th article of said treaty, concluded in 1868 at Medicine Lodge creek, which, as stated by said respondent, "precludes a less number than three-fourths of the adult male members of the tribes from ceding their lands." The said respondent, being then and now Secretary of the Interior, advised Congress that said treaty should not be ratified. See said Senate Document No. 76. Therefore your orator alleges and charges that the signatures obtained to said Jerome treaty were obtained by false and fraudulent translation of said treaty, and that no members of said tribes of Indians would have signed the same had they been truly informed as to the provisions of said treaty; and that, even after the false and fraudulent practices which were resorted to, your orator alleges and charges that three-fourths of the male adult members of said tribes never signed said Jerome treaty, as is required by the terms of the said treaty concluded at Medicine Lodge creek, in Kansas, in 1868.

Your orator further states that soon after the signing of said Jerome treaty certain members of the said Kiowa, Comanche, and Apache tribes learned that the provisions of said treaty had not been correctly and truly translated to them, and that they at once proceeded to make known to the said commissioners that they had been deceived in reference to the provisions of said treaty, and that
9 they desired to withdraw their names from the same; but they were not permitted to do so, but, on the contrary, they were threatened with violence if they persisted in their opposition to said treaty.

That said Kiowa, Comanche, and Apache Indians sent their delegates to Congress at each Congress since 1892, when said Jerome treaty was signed, except to the last or 56th Congress, to protest against the ratification of said treaty; that they would have sent a delegation to Washington during the last Congress had it not been for the fact that they were advised by the United States Indian agent, who was acting in good faith towards said Indians, that the protest against the ratification of said treaty, which was adopted at Mount Scott, on said reservation, October 9th, 1899, and the opposition of the Interior Department to said Jerome treaty would cause Congress to ignore the same, and that it was unnecessary to incur the expense of sending a delegation to Washington to oppose the ratification of said Jerome treaty.

Your orator further represents to your honors that a general council of the Kiowa, Comanche, and Apache tribes of Indians was held at Mount Scott, in said reservation, *in* the 9th day of October, 1899, at which the then Indian agent, Lieutenant Colonel James F. Randlett, of the United States Army, was present; that said Indians had previous to that time obtained the consent of the Secretary of the Interior to hold said general council; that there were present at said general council 571 adult male members of said tribes of Indians; that at their request the said Indian agent prepared a petition to the Commissioner of Indian Affairs, which was duly discussed and understood by all the said Indians who were present, and that each and every one of them signed the same of his
10 own free will, with full knowledge of the purport of his act, as certified by the said Indian agent; that said petition stated in substance that the adult male members of said tribes requested the Commissioner of Indian Affairs to approve their petition and to forward it to the Committees on Indian Affairs of both Houses of Congress; that they prayed that the so-called Jerome treaty, signed in September, 1892, may not be ratified by Congress, because, as alleged in said petition, those who signed that treaty were misled by those who represented the Government, through the interpreters employed by the commissioners appointed to treat with them; that these interpreters led them to believe that if they did not sign said treaty their lands would be taken from them under the provisions of a law called the Dawes law, then in existence, which would be very much more unfavorable to them than was provided in the proposed Jerome treaty; that each and every one of said Indians

solemnly declared in said petition that if they had not been deceived they would never have signed said treaty; that they were not allowed to have any counsel to advise them what was best for them to do; that said petition declared that if said treaty should be ratified said Indians would be doomed to destruction as a people, as other Indian tribes had been, by reason of the prematurely opening of their reservations to the settlement of white men; that their lands were not adapted to agricultural purposes, but would make excellent pastures for grazing cattle, and that said Indians would derive more benefit from this condition than would be derived were their lands thrown open*ed* to settlement by white people who want them for homesteads; that the said Indians derived a revenue from the leasing of their lands for grazing purposes, which, if taken from them at this time, will stop the progress said

11 Indians are making in ways of civilization and blight the hopes they have entertained that the Government would continue to protect their interests until they were fitted to compete with the white men in civilized ways of self-support; that the provisions of said Jerome treaty in reference to the amount of lands to be allotted to each member of the tribes were unsatisfactory, and the amounts to be allotted to each were insufficient for their support on account of the quality of their said lands; that said Indians had kept faith with the Government of the United States, as they pledged themselves to do in the Medicine Lodge treaty of 1868; that they were obedient to the laws of the land; that they are not drunkards, nor do they molest the property of whites who have located on lands adjoining their reservation; that they had placed their children in schools provided by the Government and by Christian societies; that their several schools, having a capacity for 700 pupils, are kept filled with their children, and that these facts were cited as evidence that said Indians are striving in the right way to fit their people for the day, which they realize must soon come, when their children will be dependent upon their own intelligence and physical strength for the support of themselves and their kindred; that said petition closed with the following prayer:

"We therefore pray that, for the reasons we have given herein, we may be heard in this our repudiation of the Jerome treaty, and that Congress will cast it out and not accept it as our free act and deed."

Your orator further represents unto your honors that said petition was duly forwarded by the said Indian agent to the Com-

12 missioner of Indian Affairs, with a certificate to the effect that 571 Indians of said tribes had adopted and signed the same at a general council of said tribes held at Mount Scott, on the Kiowa, Comanche, and Apache Indian reservation, in Oklahoma, on the 9th day of October, 1899, and that the signatures were attached after the subject of the memorial was duly discussed and understood by all the Indians interested, and that each and every one signed of his own free will, with full knowledge of the purport of his act.

That the said Commissioner of Indians Affairs, who was then and now is the aforesaid respondent, William A. Jones, duly received said petition signed, as aforesaid, and forwarded the same to the Secretary of the Interior, in a letter dated January 5, 1900, with a request that it be forwarded to the Committees on Indian Affairs of the Senate and House of Representatives; that in said letter the Commissioner of Indian Affairs called attention to the fact that a bill then pending in Congress proposed to amend said Jerome treaty, and to put it in force without submitting the amendments or the amended treaty to the Indians for their approval, and stated that "it was certainly a novel proposition in law that one party to an agreement may, without the consent of the other, alter or modify an essential part of such contract," and that "it is apparent that no court of law would uphold or enforce any contract so altered or amended." The said Commissioner then pointed out the fact that in all our dealings with the Indian tribes no instance was found where an agreement had ever been amended by Congress without providing for the assent of the Indians interested. The said Commissioner then proceeded in his said letter to point out the many grave objections he entertained to said Jerome treaty, and
13 submitted his conviction that said Jerome treaty, in the form in which it was presented, should be rejected by Congress.

Your orator further represents to your honors that all the statements in the said petition of the Kiowa, Comanche, and Apache tribes of Indians, adopted and signed at Mount Scott, October 9th, 1899, are true; that he was present at said general council, and of his own knowledge states that all the said Indians are opposed to the said Jerome treaty, and that they utterly repudiated the same as never having been agreed to by them; that the report of the Secretary of the Interior as to the number of male adult members of said tribes at the time said Jerome treaty was signed is substantially correct, and that 571 adult male members signed said petition, which is more than three-fourths of all the adult male members of said tribes.

Your orator further represents unto your honors that he does not speak the English language, and that but few of the members of said Indian tribes can either speak or understand said language, that they wholly depended upon the interpreters, who were selected by the said commission representing the United States, for a correct understanding of the provisions of the said Jerome treaty; that your orator and the other members of said confederated tribes of Indians are regarded as wards of the nation, and that the officials of the United States charged with the duty of administering Indian affairs are regarded as their guardians; that in the formulation and signing of the said Jerome treaty they relied implicitly upon the honesty and good faith of the said commission and their interpreters, and at the time they signed the said treaty they believed that said treaty fully and faithfully represented their wishes; but soon after signing the said treaty the said Indians discovered that
14 they had been deceived, imposed upon, and defrauded by their alleged guardians and protectors. Your orator there-

fore humbly prays that your honors will take these facts into consideration in granting the relief prayed for herein to your orator and the other members of the said confederated tribes of Indians.

Your orator further represents unto your honors that the price to be paid for the surplus lands belonging to said Kiowa, Comanche, and Apache Indians under the provisions of the said Jerome treaty is far below the real value of said surplus lands; that when said treaty was being considered by said Indians the interpreters stated to said Indians that said treaty provided for the sale of their surplus lands at some time in the future at the price of $2.50 per acre, which would amount to five million dollars for said two million acres of surplus lands, but by the terms of said treaty only one dollar an acre is allowed for said surplus lands, an amount so far below the real value of said lands as to require a court of equity, administering the law applicable to guardians and wards, to set aside the sale as contrary to equity and good conscience.

Your orator further represents unto your honors that the said Jerome treaty was ratified by Congress on the 6th day of June, 1900, notwithstanding the said petition of 571 adult male members of said tribes, so adopted at a general council of said tribes in October, 1899, eight months prior to the act of Congress ratifying the said Jerome treaty; that before ratifying the said treaty Congress amended the same in several important and material particulars, as will more fully appear by a comparison of the following portions of the texts of the said Jerome treaty as signed by the said Indians, as aforesaid, and the text as ratified by Congress:

15 *Article I, first part, as signed:*

"Subject to the allotment of land in severalty to the individual members of the Comanche, Kiowa, and Apache tribes of Indians in the Indian Territory, as hereinafter provided for, and subject to the conditions hereinafter imposed, and for the considerations hereinafter mentioned, the said Comanche, Kiowa, and Apache Indians hereby cede, convey, transfer, relinquish, and surrender, forever and absolutely, without any reservation whatever, express or implied, all their claim, title, and interest, of every kind and character, in and to the lands embraced in the following-described tract of country in the Indian Territory, to wit:" (Senate Ex. Doc. No. 17, 2d ses., 52d Cong.).

As ratified by Congress:

"Subject to the allotment of land, in severalty to the individual members of the Comanche, Kiowa, and Apache tribes of Indians in the Indian Territory, as hereinafter provided for, *and subject to the setting apart as grazing lands for said Indians, four hundred and eighty thousand acres of land as hereinafter provided for*, and subject to the conditions hereinafter imposed, and for the considerations hereinter mentioned, the said Comanche, Kiowa, and Apache Indians hereby cede, convey, transfer, relinquish, and surrender, forever and absolutely, without any reservation whatever, express or implied,

all their claim, title, and interest, of every kind and character, in and to the lands embraced in the following-described tract of country in the Indian Territory, to wit:"

Article III, as signed:

"It is further agreed that the land in said reservation shall be classed as grain-growing and grazing land; and in making selection of lands to be allotted in severalty as aforesaid, each and every Indian, herein provided for, shall be required to take at least
16 one-half in area, of his or her allotments, of grazing land."

As ratified by Congress:

"That in addition to the allotment of lands to said Indians as provided for in this agreement, the Secretary of the Interior shall set aside for the use in common for said Indian tribes four hundred and eighty thousand acres of grazing lands, to be selected by the Secretary of the Interior, either in one or more tracts as will best subserve the interest of said Indians."

Article VI, 1st paragraph, as signed:

"As a further and only additional consideration for the cession of territory and relinquishment of title, claim, and interest in and to the lands as aforesaid, the United States agrees to pay to the Comanche, Kiowa, and Apache tribes of Indians, in the Indian Territory, the sum of two million ($2,000,000) dollars, as follows: Two hundred thousand ($200,000) dollars in cash, to be distributed *per capita*, among the members of said tribes within one hundred and twenty (120) days after this agreement shall be ratified by the Congress of the United States; two hundred thousand ($200,000) dollars to be paid out to said Indians under the direction of the Secretary of the Interior in one year after said first payment, and one hundred thousand ($100,000) dollars in the same manner in one year from date of second payment, and the remaining one million and five hundred thousand ($1,500,000) dollars to be retained in the Treasury of the United States, placed to the credit of said Indians, and while so retained, to draw interest at the rate of five per centum per annum, to be paid to the said Indians *per capita* annually."

As ratified by Congress:

"As a further and only additional consideration for the
17 cession of territory and relinquishment of title, claim, and interest in and to the lands as aforesaid, the United States agrees to pay to the Comanche, Kiowa, and Apache tribes of Indians, in the Indian Territory, the sum of two million ($2,000,000) dollars, as follows: Five hundred thousand ($500,000) dollars to be distributed *per capita* to the members of said tribes at such times and in such manner as the Secretary of the Interior shall deem to be for the best interests of said Indians, which sum is hereby appropriated out of any funds in the Treasury not otherwise appropriated; and any part of the same remaining unpaid shall draw interest at the

rate of five per centum while remaining in the Treasury, which interest shall be paid to the Indians annually *per capita;* and the remaining one million five hundred thousand ($1,500,000) dollars to be retained in the Treasury of the United States, placed to the credit of said Indians, and while so retained to draw interest at the rate of five per centum per annum, to be paid to the said Indians *per capita* annually."

And in article X, as signed, there appeared the names of H. L. Scott and George D. Day, "friends of said Indians," who were to have all the benefits of sharing equally with the Indians in the lands of the tribe. Their names do not appear in the text of the treaty as ratified by Congress.

Your orator further represents unto your honors that the act of Congress which purported to ratify the said Jerome treaty shows upon its face that said treaty was amended by Congress, the ratifying clause being as follows:

"Said agreement be, and the same hereby is, accepted, ratified, and confirmed *as herein amended.*"

18 The said act of Congress ratifying said treaty is entitled "An act to ratify an agreement with the Indians of the Fort Hall Indian reservation, in Idaho, and making appropriations to carry the same into effect." (See Session Laws, first session, 56th Congress, page 672.) There was no reference in the title to the provisions amending and ratifying the said Jerome treaty.

Your orator further represents unto your honors that the said act of Congress ratifying said Jerome treaty provided as follows:

"That should any of said lands allotted to said Indians, or opened to settlement under this act, contain valuable mineral deposits, such mineral deposits shall be opened to location and entry, under the existing mining laws of the United States, upon the passage of this act, and the mineral laws of the United States are hereby extended over said lands."

From which said provision it appears that even after allotments are made to said Indians and accepted by them such lands so allotted may at any time thereafter be taken from the allottees without compensation and given to the locators of mining claims if valuable mineral deposits should at any time in the future be found on such lands. Said provision was not contained in the treaty as signed, and will result when invoked in the confiscation of the property of said Indians who may be so unfortunate as to accept an allotment upon land which may hereafter be found to contain valuable mineral deposits.

Your orator further represents unto your honors that the said act of Congress ratifying the said Jerome treaty contained a provision which conferred upon the Court of Claims of the United States

19 jurisdiction to hear and determine the claim of the Choctaw and Chickasaw nations to the lands embraced in said Jerome treaty, with right of either party to appeal to the Supreme Court of the United States, and that should a final judgment or decree be entered in said action that the Choctaw and Chickasaw nations have

any right, title, or interest in or to said lands for which they should be compensated by the United States, then the said sum of $1,500,000, mentioned in article VI of said Jerome treaty, "shall be subject to such legislation as Congress may deem proper."

Your orator further represents to your honors that said provision last above quoted was not incorporated in the original Jerome treaty, and that the same has never received the approval of said Indians; that under said provision the said Indians may never receive any compensation whatever for said two million acres of land; that said provision may deprive the said Indians of two million acres of their lands without their consent, either express or implied, and to their great wrong and oppression; that the said Indians know nothing of the merits of the claim of said Choctaw and Chickasaw nations to said lands; that no intimation was given to said Indians when they concluded the Medicine Lodge treaty of 1868 that the title of the United States to the lands ceded to them by said treaty was clouded in any way, but, on the contrary, the said Indians then believed that the title to said lands was free from the claims of all other Indian nations and of all other persons, and that the United States had full right to convey said lands to said Indians by a perfect and unassailable title; that by the second article of said Medicine Lodge treaty of 1868 said lands were "set apart for the absolute and undisturbed use and occupation of the said tribes," and the United States solemnly agreed that no persons except those authorized so to do "shall ever be permitted to pass over, settle upon, or reside in the territory described in this article."

Your orator further represents to your honors that at the second session of the 56th Congress an act was passed and approved March 3, 1901, entitled "An act to supplement existing laws relating to the disposition of lands, and so forth" (see Session Laws, 1st session, 56th Congress, pp. 1093–'4); that said act provided that it should be the duty of the Secretary of the Interior to subdivide the lands embraced in said Jerome treaty, which were ceded to the United States by the provisions thereof, into such number of counties as will, for the time being, best subserve the public interests, and to designate county-seats on said lands, and that said lands be surveyed, subdivided, and platted, under the direction of the Secretary of the Interior, into appropriate lots, blocks, streets, alleys, and sites for parks or public buildings, so as to make a town site thereof; that the said lands should also be opened to settlement by white men by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled thereto under the act of Congress ratifying said Jerome treaty; that said act of June 6, 1900, ratifying said treaty, provided for the allotment of land to each member of said Kiowa, Comanche tribes of Indians, and that the lands not allotted or set apart for pasture lands, embracing about two million acres, shall be opened to settlement by white people under the general provisions of the homestead and town-site laws of the United States, with certain provisos set forth in said act, and that the said Secretary of the

Interior, by the provisions of said act and a supplemental act of Congress (urgent deficiency act of Jan. 4, 1901, Sess. Laws,
21 2d sess., 56th Cong., 727), was authorized to extend the time for making allotments and opening of the said lands to settlement for a period not exceeding eight months from the sixth day of December, nineteen hundred; that said period will expire on the sixth day of August, 1901.

Your orator further represents unto your honors that so much of said act of Congress of June 6, 1900, and so much of said acts supplementary thereto and amendatory thereof as provide for the ratification of said Jerome treaty, the allotment of certain lands mentioned therein to members of said Indian tribes, the surveying, laying out, and platting town sites and locating county-seats on said lands, and the ceding to the United States and the opening to settlement by white men of two million acres of said lands, were enacted in violation of the property rights of the said Kiowa, Comanche, and Apache Indians, and if carried into effect will deprive said Indians of their lands without due process of law, and that said parts of said acts are contrary to the Constitution of the United States and are void and confer no right, power, or duty upon the said Secretary of the Interior or upon the said Commissioner of Indian Affairs or upon the said Commissioner of the General Land Office, the respondents in this cause, to do or perform any of the acts or things enjoined or required by said pretended acts of Congress, for the following reasons:

First. That the said Indians were induced to sign the said treaty by false and fraudulent translations, and that none of those who signed said treaty understood its provisions.

Second. That by the provisions of the Medicine Lodge treaty no part or portion of said lands could be ceded or alienated without the consent of three-fourths of the male adult members of said tribes, and that three-fourths of such male adults have never signed said Jerome treaty or any other treaty or agreement by
22 which they ceded or alienated any portion of their said lands.

Third. That eight months prior to the time Congress pretended to ratify said Jerome treaty 571 adult male members of said tribes, which were more than three-fourths of such number, met in general council, with the approval of the Secretary of the Interior and the Indian agent, at Mount Scott, in said reservation, and solemnly repudiated the said treaty and prayed Congress "to cast it out and not accept it as their free act and deed."

Fourth. That in the act of Congress pretending to ratify said Jerome treaty numerous amendments, changing important provisions of said treaty, were made by Congress, and that said treaty was attempted to be put in force without submitting said amendments or the treaty as thus amended to the approval of said Indians.

Your orator further represents unto your honors that notwithstanding the said acts of Congress so set forth, as aforesaid, are un-

constitutional and void and impose no duties or authority whatever upon the respondents to enforce said void statutes, yet your orator is informed and believes that said respondents are now engaged in carrying said void acts into effect, and thereby threatening the said Indians with the loss of their property and of their lands, in violation of the Constitution of the United States and the solemn treaty provisions by which they acquired said lands, and unless restrained by this honorable court the said respondents will cause irreparable injury, wrong, and oppression to and the deprivation of the property rights of your orator and all the other members of said confederated tribes of Indians.

To the end, therefore, that the said respondent- may, if they can, show why your orator should not have the relief hereby and herein prayed for and may, upon their several and respective corporal oaths and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to such of the several interrogations hereinafter numbered and set forth as by the note herein underwritten they are respectively required to answer—that is to say:

23

1. Whether it is not true that the signatures of said Kiowa, Comanche, and Apache Indians, which are signed to said Jerome treaty, were procured to be signed by wilful misrepresentations and false translations to the said Indians by the interpreters, and whether the agents and employés of the United States and the Indians have not officially informed the said respondents that such is the fact, and whether the official reports of the Secretary of the Interior do not attest such fact?

2. Whether it is not true that the whole number of adult male members of said tribes of Indians was at the time of the signing of said Jerome treaty 629, and that three-fourths of that number of adult male members of said tribes never signed said Jerome treaty?

3. Whether it is not true that 571 adult male members of said tribes of Indians met at Mount Scott, on said reservation, in October, 1899, eight months prior to the pretended ratification of said Jerome treaty by Congress, and then and there, in general council of said tribes, solemnly repudiated said treaty and prayed Congress to cast it out and not accept it as their free act and deed?

4. Whether or not it is true that Congress adopted a number of amendments to said treaty in the act ratifying the same, and that neither said amendments nor the treaty as thus amended were *were* submitted to said Indians for their approval?

24

Your orator prays that the said Ethan A. Hitchcock, William A. Jones, and Binger Hermann, their counselors, attorneys, or agents, may be restrained, by an injunction issuing out of this court, from proceeding further against your orator and against the said Kiowa, Comanche, and Apache Indians, and especially from proceeding further in allot-ing any of said lands to said Indians, in surveying, laying out, and platting town sites and county-seats on said lands,

and from opening any of said lands to settlements by white people, and generally from doing or from performing any of the acts or things required by said void acts of Congress, and that your orator and the said Kiowa, Comanche, and Apache tribes of Indians shall have generally such other and further relief as the nature of this case may require.

And may it please your honors to grant unto your orator the writ of injunction issuing out of and under the seal of this court, directed to the said Ethan A. Hitchcock, William A. Jones, and Binger Hermann, their counselors, attorneys, solicitors, and agents, and all other officers, clerks, agents, and employés of the Government of the United States acting under the orders and instructions of the said respondents, commanding them and each of them absolutely to desist and refrain from proceeding further against your orator and against the said Kiowa, Comanche, and Apache Indians in the carrying into effect of said void acts of Congress as set forth in said action, as above.

And your orator further represents unto your honors that he and the other members of said Indian tribes in whose behalf this
25 suit is brought are wholly without remedy at law, and that the relief prayed for herein must be granted at once; otherwise your orator and the other members of said Indian tribes will sustain irreparable injury and loss of property of immense value heretofore conveyed to them by the United States by solemn treaty obligations. Your orator therefore prays your honors to grant unto your orator, pending a final hearing of this cause, a temporary injunction, directed to said respondents aforesaid, issued as aforesaid, restraining them, their counselors, attorneys, solicitors, and agents, and all other officers, clerks, agents, and employés of the United States acting under the orders and instructions of said respondents, commanding them and each of them to absolutely desist and refrain from doing any of the acts and things complained of, as herein set forth, and especially from proceeding further in the carrying into effect of the provision of said void acts of Congress and granting your orator temporarily such other and further relief as the nature of this case may require.

And upon a final hearing of said cause your orator prays that said injunction may be made perpetual, and that said respondents pay the costs in this suit.

Therefore will your honors grant unto your orator the writ of subpœna, issuing out of and under the seal of this court, to be directed to said respondents, Ethan A. Hitchcock, William A. Jones, and Binger Hermann, commanding them and each of them, by a certain day and under a certain penalty therein inserted, to appear before your honors in the court aforesaid, and then and there answer the premises and abide the order and decree of the court.

26 WILLIAM M. SPRINGER,
Solicitor for Complainant.

NOTE.—The respondent Ethan A. Hitchcock and the respondent William A. Jones are each required to answer the interrogatories numbered respectively 1, 2, 3, and 4.

The respondent Binger Hermann is not required to answer any of said interrogatories.

Affidavit.

Personally appeared before me, the undersigned, notary public within and for the District of Columbia, Lone Wolf, who, being duly sworn, deposeth and saith that the facts set forth in the within complaint are true; and further he saith not.

[SEAL.] B. H. LYON,
Notary Public.

27 *Rule.*

Filed Jun- 6, 1901.

In the Supreme Court of the District of Columbia.

LONE WOLF ET AL.
vs.
THE SECRETARY OF THE INTERIOR ET AL. } No. 22338. Equity.

Upon consideration of the bill in the above-entitled cause, it is, this 6th day of June, A. D. 1901, ordered that the defendants show cause, if any they have, on the 12th day of June, 1901, at eleven (11) o'clock a. m., why temporary injunction should not be granted as therein prayed, provided a copy of this order be served upon said defendants on or before the 8th day of June, 1901.

A. C. BRADLEY, *Justice.*

Marshal's Return.

Served copy of within order on Thomas Ryan, acting Secretary of the Interior, June 8, 1901.

AULICK PALMER, *Marshal.*
B.

28 *Affidavit of E. A. Hitchcock.*

Filed Jun- 12, 1901.

In the Supreme Court of the District of Columbia.

LONE WOLF, ETC., Complainant,
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior, *et al.*, Respondents. } No. 22338, Doc. 50. In Equity.

Affidavit of Ethan A. Hitchcock in opposition to temporary injunction.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

Ethan A. Hitchcock, being first duly sworn, upon his oath doth depose and say that he is the Secretary of the Interior, and has been

such Secretary since the 20th day of February, 1899; that as such Secretary he is respondent in the above-entitled suit; that heretofore the complainant, Lone Wolf, A-kei-quodle, his wife, and Ah-tape, his daughter, by virtue of section 6 of the act of Congress approved June 6, 1900 (31 Stat., 672, 676), entitled "An act to ratify an agreement with the Indians of the Fort Hall Indian reservation, in Idaho, and making appropriations to carry the same into effect," and by virtue of that portion of the act of Congress approved January 4, 1901 (31 Stat., 727), entitled "An act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June thirtieth, nineteen hundred and one, and for other purposes," which authorized the Secretary of the Interior to extend the time for making allotments in severalty to the Indians under section 6 of the last-named act, being respectively members
29 of the Kiowa tribe of Indians, did severally and regularly select and take for themselves, in the manner provided in section 6 of the said act of June 6, 1900, from the lands therein described and thereby ceded to the United States, 160 acres each, to be held and owned by them in severalty as allotments; that thereafter and on the 23rd day of May, 1901, these three allotments were regularly approved by the Secretary of the Interior under section 6 of said act of June 6, 1900; that heretofore each and every member of the Comanche, Kiowa, and Apache tribes of Indians, excepting not more than 12 of said Indians—those over 18 years of age acting for themselves, and those under that age acting through their father, mother, or an allotting agent appointed for the purpose by the Commissioner of Indian Affairs—did regularly select and take for himself or herself, in the manner provided in section 6 of the said act of June 6, 1900, and by virtue thereof, from the lands therein described and thereby ceded to the United States, 160 acres, to be held and owned by him or her in severalty as an allotment; that the total number of allotments so selected and taken is 2,759; that of the allotments so selected and taken 2,503 were regularly approved from time to time by the Secretary of the Interior under section 6 of said act of June 6, 1900, before the service of process in this suit, and the remainder thereof are now in course of transmission from the allotting agent, through the Commissioner of Indian Affairs, to the Secretary of the Interior, for approval; that the allotments heretofore approved, as aforesaid, include allotments selected and taken by more than three-fourths of all the adult male Indians occupying the lands so as aforesaid ceded to the United States; that each and every of said allotments was so
30 selected and taken in conformity to section 6 of the said act of June 6, 1900, and not otherwise; that not one of said Indians has surrendered or attempted to surrender his allotment so selected and taken as aforesaid; that heretofore and on April 22, 1901, in addition to the allotment of lands to said Indians, as aforesaid, the Secretary of the Interior, acting in pursuance of section 6 of said act of June 6, 1900, did select and set aside for the use in common of the Comanche, Kiowa, and Apache Indian tribes from

the lands described in said section approximately 480,000 acres of grazing lands believed by him to best subserve the interests of said Indians; that said grazing lands were so selected and set aside with the approval of a council composed of the chiefs and head men of said Indians; that by reason of accepting, as aforesaid, the benefits of the agreement and cession set forth in section 6 of the said act of June 6, 1900, this affiant submits that said Comanche, Kiowa, and Apache tribes of Indians, including the complainant Lone Wolf, have assented to and ratified the said agreement in cession, as set forth in said section; that in respect to the action of the Secretary of the Interior herein recited this affidavit is made from the personal knowledge of the affiant, and that as to the other matters herein recited it is based upon the information which affiant has obtained from the reports of subordinate officers in the Indian service, allotting lists, papers, and records which have passed under his observation and supervision as Secretary of the Interior in the course of transacting the official duties devolving upon him in the execution of section 6 of the said act of June 6, 1900, and other acts supplemental thereto, and that affiant believes all of the matters
31 herein recited to be true.

E. A. HITCHCOCK.

Subscribed in my presence and sworn to before me this 12th day of June, 1901.

W. BERTRAND ACKER,
[SEAL.] *Notary Public in and for D. C.*

32 *Affidavit of Lone Wolf.*

Filed June 13, 1901.

In the Supreme Court of the District of Columbia.

LONE WOLF, ETC., Complainant, *v.* ETHAN A. HITCHCOCK, Secretary of the Interior, *et al.*, Respondents.	No. 22338, Doc. 50. In Equity.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss:*

Lone Wolf, the complainant in the above-entitled case, being duly sworn, deposes and says that he has not accepted an allotment of land under the act of Congress approved June 6, 1900, and the acts supplement- to and amendatory thereof; that he is occupying certain lands in the Kiowa, Comanche, and Apache reservation in Oklahoma, and he assumes that the lands occupied by him will be allotted to him whenever a legal allotment is made.

But affiant asserts that by no act of his own has he ever recognized the validity of the so-called Jerome treaty, and that he is informed and believes that substantially all of the members of the said Indian tribes, the Kiowas, Comanches, and Apaches, are opposed to

the said Jerome treaty, and that they have not done or performed any act which they regard as a ratification of said Jerome treaty; that affiant is informed and believes the fact to be true that 458 members of said tribes have within ten days last past signed a
33 petition to the President of the United States, praying him to withhold his proclamation opening the lands mentioned in said Jerome treaty to settlement by white men, and in which petition said Jerome treaty is repudiated as an act of injustice, spoliation, and robbery; that your affiant is informed and believes that a delegation representing said tribes has been appointed to bring said petition to Washington, and that said delegation is now on its way to this city; that said delegation is authorized to present said petition to the President and to make known to him and to the respondents in this case that the said Indians have never given their consent to or approval of the so-called Jerome treaty; that the signatures were procured by false translations; that three-fourths of the adult male members of said tribes never signed said treaty, and that all of said Indians have repeatedly repudiated the same; that said delegation will come with authority of 458 adult male members of said tribes, to use all means in their power to prevent the carrying into effect of said fraudulent treaty, and especially to resort to all legal means that may be deemed necessary to that end; that affiant is informed and believes that said delegation will arrive in this city on tomorrow, June 14th.

And further deponent saith not.

his
LONE x WOLF.
mark.

1901, June 13.—Mark made and sworn to before me and explained by Interpreter James Waldo.

Test:
[SEAL.]

JOHN R. YOUNG, *Clerk, &c.*,
By R. J. MEIGS, JR., *Ass't Clerk.*

31 *Motion for Leave to Amend Bill.*

Filed Jun- 17, 1901.

In the Supreme Court of the District of Columbia, June Term, 1901.

LONE WOLF, Who Sues as Well for Himself as All Other Members of the Confederated Tribes of the Kiowa, Comanche, and Apache Indians Residing in the Territory of Oklahoma, Complainant,	No. 22338, Doc. 50. In Equity.
v.	
ETHAN A. HITCHCOCK, Secretary of the Interior; WILLIAM A. JONES, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office, Respondents.	

Now comes Lone Wolf, the complainant in the above-entitled cause, and moves the court for leave to amend his bill of complaint

by making the following-named members of the Kiowa, Comanche, and Apache tribes of Indians, in the Territory of Oklahoma, parties plaintiff with himself in said bill of complaint, namely:

Eshitie, principal chief of the Comanches;
White Buffalo,
Ko-Koy-Taudle,
Mar-Mo-Sook-Car-Wer,
Narwats,
Too-Wi-Car-Ne,
William Tivis, and
Delos K. Lonewolf.

And that the first paragraph of said bill of complaint be
35 amended so as to read as follows:

Your orators, Lone Wolf, principal chief of the Kiowa tribe of Indians; Eshitie, principal chief of the Comanches tribe of Indians; White Buffalo, Ko-Koy-Taudle, Mar-Mo-Sook-Car-Wer, Narwats, Too-Wi-Car-Ne, William Tivis, and Delos K. Lonewolf, all members of the Kiowa, Comanche, and Apache confederated tribes of Indians, residing in the Territory of Oklahoma, and delegates duly appointed by said tribes at a general council of said tribes held at Anadarko, on the Kiowa, Comanche, and Apache Indian reservation, in said Territory of Oklahoma, on the 3*th*, 4th, 5th, 6th, and 7th days of June, 1901, and authorized to represent said tribes in the city of Washington in the matter of preventing the wrongs and injuries to said tribes complained of in this their bill of complaint and duly authorized by said tribes in general council, as aforesaid, to resort to all legal means that they may deem necessary to prevent the opening of their lands to settlement by white people and to prevent other wrongs and injuries against them as hereinafter set forth in this their bill of complaint, and who sue as well for themselves as all other members of the said confederated tribes of Kiowa, Comanche, and Apache Indians by the authority aforesaid, respectfully represent that they now are and always have been members of the Kiowa, Comanche, and Apache tribes of Indians so residing in the said Territory of Oklahoma, and that all of said tribes are now united or confederated into one tribe with the consent and approval of the United States and of each of said tribes respectively, and that for the purpose of dealing with the authorities of the United States the said tribes are treated as one tribe and hold general councils for
said confederated tribes, and for the purpose of transacting the
36 business especially pertaining to each tribe respectively they
each keep up their tribal organizations in said Territory and have so kept *them* up said tribal organizations in said Territory for many years for the transaction of all the business of said tribes, and in respect to their lands, which are held in common, said tribes treat with the Government of the United States as one confederated tribe, having a grand council of the adult male members of said tribes for the transacting of all business of said tribes with the United States.

That the grand council of all of said tribes, held, as -foresaid, at

the time and place aforesaid, did authorize, in the only manner known to said tribes, the institution of any suit that said delegates might deem necessary for the purpose of preventing the wrongs and injuries against said Indians as set forth in their said bill of complaint.

And that the other provisions of said bill of complaint be so amended that the word "orator" and the words "he" and "himself" and the verbs to which all of said words relate be changed from the singular to the plural number.

W. M. SPRINGER,
Solicitor for Complainant.

Personally appeared before me, R. B. H. Lyon, a notary public, Delos K. Lonewolf, interpreter to Lone Wolf, complainant in the above-entitled cause, who solemnly swears that he has interpreted the foregoing amended bill of complaint truly and accurately as set forth in said bill — complaint, having read the same first and then informed the complainant of the contents in the complainant's native Indian language.

DELOS K. LONEWOLF.

Subscribed and sworn to on this 15th day of June, A. D. 1901.

[SEAL.]

R. B. H. LYON,
Notary Public.

Also personally appeared before me, R. B. H. Lyon, a notary public, Lone Wolf, the complainant in the above-cited bill of complai*nant*, who, after having the aforesaid bill of complaint explained to him by Delos K. Lonewolf, his interpreter, in his native Indian language, swears that the statements made therein upon his personal knowledge he knows to be true, and that those made therein upon his information and belief he believes to be true.

his
LONE WOLF. x
mark.

Subscribed and sworn to on this 15 day of June, A. D. 1901.

[SEAL.]

R. B. H. LYON,
Notary Public.

37 *Petition for Leave to be Made Parties Complainant.*

Filed June 17, 1901.

In the Supreme Court of the District of Columbia, June Term, 1901.

LONE WOLF, Who Sues as Well for Himself as All Other Members of the Confederated Tribes of the Kiowa, Comanche, and Apache Indians Residing in the Territory of Oklahoma, Complainant,
v.
ETHAN A. HITCHCOCK, Secretary of the Interior; WILLIAM A. JONES, Commissioner of Indian Affairs, and BINGER HERMANN, Commissioner of the General Land Office, Respondents.

No. 22338. Doc. 50. In Equity.

To the honorable the chief justice and the associate justices of the supreme court of the District of Columbia:

The undersigned respectfully represent unto your honors that they, together with Lone Wolf, the complainant in the above-entitled cause, were, as a general council of the Kiowa, Comanche, and Apache tribes of Indians, held at Anadarko, in the Territory of Oklahoma, on the 3d, 4th, 5th, 6th, and 7th days of June, 1901, appointed delegates to represent said tribes in the city of Washington; that the resolution by which they were so appointed is in words and figures as follows:

Resolved, That Lone Wolf, principal chief of Kiowas;
Eshitie, principal chief of Comanches;
White Buffalo,
Ko-Koy-Taudle,
Mar-Mo-Sook-Car-Wer,
Narwats,
Too-Wi-Car-Ne,
William Tivis,
Delos K. Lonewolf,

be, and they are hereby, appointed delegates to represent the Kiowa, Comanche, and Apache Indians in the city of Washington; that they are authorized to select not exceeding three interpreters to accompany them on their mission; that the subsistence and traveling expenses of said delegates and their interpreters shall be paid out of the funds belonging to the tribes; that the Commissioner of Indian Affairs at Washington is authorized and directed to pay the accounts of said delegates and interpreters upon vouchers fur-
38 nished him, and to charge the amounts thus paid to our tribal funds.

That it shall be the duty of said delegates and interpreters to proceed at once to the city of Washington and there to present to

our Great Father, the President of the United States, our memorial adopted this day and to make known to him and to the Secretary of the Interior and the Commissioner of Indian Affairs, to the Congress of the United States, and to all other officials of the United States, that we, the Kiowa, Comanche, and Apache tribes of Indians, in the Territory of Oklahoma, have never given our consent to or approval of the so-called Jerome treaty, which Congress, on the 6th day of June, 1900, ratified and declared to be in force; that the signatures to said treaty were procured by willful misrepresentation and false translation; that three-fourths of the adult male members of the tribes never signed said treaty, as is required by our existing treaties; that 571 adult male members of said tribes out of a total membership of 639, eight months before Congress ratified it, repudiated it in a general council, at Mount Scott, October 9th, 1899, and that Congress amended said treaty in many material and important particulars and put it in force without submitting the amended treaty to the said tribes for their approval.

That our said delegates are authorized to secure the services of able lawyers to assist them in all their efforts in said city of Washington to prevent the carrying into effect of said fraudulent treaty, and they are authorized to resort to all legal means that they may deem necessary to that end; that the Secretary of the Interior and the Commissioner of Indian Affairs be, and they are hereby, authorized and requested to approve the contracts which may be made by our delegates for the employment of attorneys to represent
39 our said tribes in all matters in said city of Washington and to allow a just and liberal compensation for their services, to be paid out of the funds of the tribes; that our said delegates and the attorneys employed by them shall continue to represent our said tribes in Washington before the Great Father, the departments of the Government, and the Congress until said fraudulent treaty shall be repudiated by Congress or submitted to us as amended by Congress for the approval of our tribes.

That the undersigned, with the exception of White Buffalo and Ko-Koy-Taudle, were present at said general council of said tribes of Indians; that said resolution was fully interpreted and explained to all the members of said tribes who were present, numbering 454 adult male members of said tribes, and that all of them approved said resolution and signed the same, together with a memorial addressed to the President of the United States.

The undersigned respectfully represent unto your honors that said resolution represents substantially the sentiments and wishes of all the members of said tribes, except a few of the white men, who were adopted into the tribe by the so-called Jerome treaty of 1892; that the entire lawful membership of said tribes is opposed to the said Jerome treaty, and especially opposed to the opening of any of their lands to settlement by white people; that they have never accepted allotments of their lands to the extent of approving said allotments; that they were told by allotting agents that they must select land to be allotted to them or said agents would make the se-

lections, which might be on poor land, and that they would be obliged to accept whatever allotments might be assigned to them; that by no act or acts of said Indian tribes have they approved said Jerome treaty, and that but for the active opposition of the United States Indian agent at said Indian agency, and the threats and intimidations resorted to to prevent the Indians from participating in said council proceedings, all the adult male members would have participated in said council and approved said resolution and the memorial to the President which was adopted.

The undersigned, therefore, respectfully request your honors to permit them to be impleaded with the said Lone Wolf as parties plaintiff in the above-entitled cause, and that they may be permitted, together with said Lone Wolf, to prosecute said suit, as well for themselves as for all other members of said tribes of Indians, who are too numerous to be named in said bill of complaint; that said bill of complaint has been interpreted and explained to them, and that the facts therein stated are true to their personal knowledge in so far as they were cognizant thereof, and in so far as they are historical or based upon official documents they believe them to be true.

his
ESHITIE, x
mark.
Principal Chief of Comanches.
his
WHITE BUFFALO. x
mark.
KO KOY TAUDLE.
his
MAR-MO-SOOK-CAR-WER. x
mark.
his
NAR-WATS. x
mark.
his
TOO-WI-CAR-NE. x
mark.
WILLIAM TIVIS.
DELOS K. LONEWOLF.

Subscribed and marks made and sworn to before me June 15, 1901.

[SEAL.] JOHN R. YOUNG, *Clk, &c.*,
By R. J. MEIGS, JR., *Ass't Clk.*

41 *Order Allowing Complainant to Amend Bill.*

Filed June 18, 1901.

In the Supreme Court of the District of Columbia.

LONE WOLF, Complainant,
vs.
ETHAN A. HITCHCOCK ET AL., Defendants.
} No. 22338. In Equity. Doc. 50.

Upon consideration of the motion of complainant for leave to amend his bill of complaint, heretofore filed herein, after argument by counsel for the respective parties and consideration by the court, it is, this 18th day of June, A. D. 1901, ordered that the complainant be, and he hereby is, allowed to amend the said bill by making new parties complainant as in said motion set forth.

A. C. BRADLEY, *Justice.*

42 *Order Denying Application for Temporary Injunction.*

Filed June 21, 1901.

In the Supreme Court of the District of Columbia.

LONE WOLF, ETC., Complainants,
v.
ETHAN A. HITCHCOCK, Secretary of the Interior, *et al.*, Respondents.
} No. 22338, Docket 50. In Equity.

Come now the parties to this cause, by their respective solicitors, and the cause having heretofore been submitted to the court upon the application of the complainants for a temporary injunction, as prayed for in the bill of complaint, and the court, being duly advised in the premises, does now consider, order, and decree that the complainants' application and prayer for a temporary injunction, pending the final hearing, be, and the same is hereby, denied. Whereupon the complainants give notice of their intention to apply by petition to the Court of Appeals in the District of Columbia for the allowance of an appeal from this order.

Dated June 21, 1901.

A. C. BRADLEY, *Justice.*

43 *Opinion of Court.*

Filed June 21, 1901. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

LONE WOLF ET AL., Who Sue as Well for Themselves as for All Other Members of the Kiowa, Comanche, and Apache Confederated Tribes of Indians,
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior; William A. Jones, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office.
} In Equity. No. 2238.

WASHINGTON, D. C.,
THURSDAY, *June 20th*, 1901—1 o'clock p. m.

Opinion of Mr. Justice Bradley.

In the case of Lone Wolf *vs.* Ethan A. Hitchcock, Secretary of the Interior, and others, which was heard upon an application for a preliminary injunction, it is alleged by the bill that the complainant is a member of the Kiowa tribe of Indians, which is united with the Comanche and Apache tribes, and resides with such confederated tribes in the Territory of Oklahoma, where he has resided since the year 1868. He brings this suit for himself and for all other members of the confederated tribes residing in that Territory. He alleges that these tribes had set apart for their absolute and undisturbed use and occupation three million acres of land under treaties proclaimed August 25, 1868, which they are at
44 present occupying, but that their possession is threatened to be disturbed by the defendants in the enforcement of the provisions of an act of Congress approved June 6, 1900; that this act of Congress is unconstitutional and void because it will deprive the confederated tribes of their lands without their consent and against their protest; that it purports to ratify a prior agreement, made and signed by commissioners on the part of the United States and by 456 Indians, dated October 6, 1892, but the agreement has been amended and changed in material respects by the statute; that the changes had not been submitted to them for their concurrence, and that while the treaty of 1868 provided that no treaty for the cession of any portion of the reservation should be of any force against the Indians unless executed and signed by at least three-fourths of all the male adult Indians occupying the same, yet the agreement was signed by less than three-fourths, and that those who did sign were misled by representations and false translations and did not comprehend the nature of the agreement; that from the time of the agreement down to the enactment mentioned the Indians repeatedly

protested to Congress against the ratification of the agreement, calling its attention to these objections, and that a memorial signed by 571 Indians, who attended a general council of these tribes, which stated the substance of all of these objections, was forwarded to the Commissioner of Indian Affairs, who forwarded it to the Secretary of the Interior January 5th, 1900, with the request that it be forwarded to the Committees on Indian Affairs of the Senate & House of Representatives, and it was so forwarded; that the act of June 6, 1900, and the further supplementary act of March 3, 1901, provided for the
45 allotment to each member of the tribes of 160 acres of land, for the setting apart of 480,000 acres for common grazing purposes, for the payment of $500,000 in cash, distributed *per capita*, and for the retaining and investment at 5% by the United States of $1,500,000 and the payment of the interest as it accrued to the members of the tribes *per capita*, and for the opening to settlement by white people, under the proclamation of the President of the United States, of the remaining, about 2,000,000 acres; that such opening to settlement will be made, unless restrained, immediately after August 6, 1901; that the provisions of the act of June 6, 1900, under the circumstances, are unconstitutional and void, as the Indians will thereby be deprived of their lands without due process of law.

He alleges "that the question of allotment of their said lands in part and the sale of their surplus lands and the treaties by which said lands are held is one of *common* and *general* interest to all the members of the said confederated tribes of Kiowa, Comanche, and Apache Indians residing in said Territory, and against whom it is threatened" to enforce the provisions of the acts of Congress which "will deprive said confederated tribes of their land," and that therefore he brings his suit for himself and as well all other resident members of the confederated tribes.

He prays that the defendants and their agents may be *injoined* from proceeding further against him "and against the said Kiowa, Comanche, and Apache Indians in carrying into effect the provisions of said acts."

A rule to show cause was issued, and in response thereto the
46 defendants have appeared by counsel and submitted an affidavit showing that all of said Indians belonging to said tribes have taken their allotments of land in severalty under said act of June 6, 1900, and that 480,000 acres of land for grazing purposes have been selected and set apart under its provisions, and have objected, first, that the complainant has no such right in the subject of his bill as gives him any standing in a court of equity or entitles him to injunctive relief, and that his joining any member of other Indian tribes similarly situated is ineffectual to give such standing; and, second, that this court is without jurisdiction in the premises, because the alleged grievance was created by the political department of the Government, that the matter is exclusively within its control and cognizance, and that the remedy must be sought there.

The interest of the confederated tribes in the lands under the treaty of 1868 is a right of occupancy, a right of which they can

dispose only with the consent of the United States. The complainant or any other individual Indian has no separable or personal interest in the land itself, unless he has availed himself of the right of selecting land for farming purposes. His right is one that is common to all the members of the tribes who reside upon the land, a right derived from membership that continues while he remains a member of the community, and ceases when he severs his connection with the tribe. When he leaves and ceases to jointly occupy he loses this right, which is derived from association. He has no personal right of which he can dispose during life, and in the event of his death while in the enjoyment of such occupancy he transmits no right to his descendants, who derive their right *not* through him, but from the
47 common source. The threatened injury which the bill seeks to enjoin will affect the complainant only as a member of the confederated tribes. The injuries that he apprehends are not peculiar to himself, but of the same kind as those that will be sustained by the other members, and there is much force in the objection that he cannot maintain this suit either alone or in behalf of himself and of all other members of the confederated tribes residing in Oklahoma Territory. Complainant has obtained leave to amend his bill by joining as coplaintiffs a number of other Indians who recite that they are authorized to act for the tribes, but they still sue in the same form for themselves and all other members. If the complainant has not a sufficient interest in himself to maintain the suit in his own name, and his coplaintiffs are in like situation, the multiplication of such complainants would be unavailing.

(Georgetown *v.* Alexandria Canal Co. *et al.*, 12 Pet., 91.)

But, conceding that the proper complainant is before the court, what is the case made? The land was "set apart for the undisturbed use and occupation" of these tribes by the terms of the treaty ratified and confirmed by the Senate of the United States and by the President July 25, 1868. Article 12 of this treaty provides that "no treaty for the cession of any portion or part of the reservation herein described, which may be held in common shall be of any validity or force as against the said Indians unless executed and signed by at least three-fourths of all the adult male Indians occupying the same." The agreement of October 6, 1892, was negotiated by three commissioners on the part of
48 the United States, and was signed by them and by 456 Indians, to whom it had been translated and interpreted by their own interpreters, and the Indian agent certified that those who signed were more than three-fourths of the adult male members of the tribes. By its terms it was to be effective only when ratified by the Congress of the United States. It was not ratified until June 6, 1900, and meantime the Indians, by their various delegations, at session after session of Congress presented to the appropriate committees of both houses their objections to such ratification, based upon the misrepresentations claimed to have been made to them, the misinterpretation of the terms of the agreement claimed to have

been given them by their interpreters, the failure to obtain the signature of three-fourths of the adult males, and the other objections set out in this bill. By the act of March 3, 1871, embodied in section 2079, Revised Statutes of the United States, it was provided that thereafter "No Indian nation or tribe shall be acknowledged as an independent nation, tribe, or power with whom the United States may contract by treaty, but no obligation of any treaty * * * prior to March 3, 1871, shall be hereby invalidated or impaired." No question is made as to the power of Congress to so enact, to substitute the form of contract for the form of treaty in dealing with the Indians respecting their rights, or that the agreement made subject to ratification by Congress was not as binding upon them as a treaty
49 made subject to ratification by the Senate and the President, but it is claimed that the act ratifying the treaty and the acts supplementary thereto are unconstitutional and void, as depriving them of their property without due process of law.

It has been repeatedly declared judicially that it is difficult to define with exactness the meaning of that phrase. What is due process of law under given conditions and circumstances would fail to reach the constitutional requirement under others.

"It may be stated generally that due process of law requires an orderly proceeding adapted to the nature of the case, in which the citizen has an opportunity to be heard and to defend, enforce, and protect his rights. A hearing or an opportunity to be heard are absolutely essential."

(Earl, J., in Stuart *vs.* Palmer, 74 N. Y., 191.)

"The exercise of the right of eminent domain," says an eminent jurist, "stands on the same ground with the power of taxation. Both are emanations of the law-making power. They are attributes of political sovereignty, for the exercise of which the legislature is under no necessity to address itself to the courts. In imposing a tax or in appropriating the property of a citizen, or a class of citizens, for a public purpose, with a proper provision for compensation, the legislative act is itself due process of law."

(Denio, J., in People *vs.* Smith, 21 N. Y., 595.)

The proceeding adopted in this case is the ordinary course
50 followed in many like cases where Indians of other tribes have agreed to accept lands in severalty, with compensation for lands taken by the Government and thrown open for settlement. It is the usual process. The method was, first, negotiation; then an agreement specifying terms subject to ratification by Congress; then full opportunity to be heard in the committees of Congress, and finally a legislative act providing for compensation; for an allotment in severalty of 160 acres to each resident soul in the tribes, to become ultimately vested in fee-simple; for the protection of those who have made improvements upon land and who are occupying such land, and for the setting apart of 480,000 acres of grazing land for use in common by the tribes.

Tested by the principles declared in the cases quoted, this pr
cedure was due process of law.

The exercise of the sovereign power in this legislation is som
what analagous to the exercise of the right of eminent domain, an
the question would seem to be whether this is taking private pro
erty for public use without just compensation, in violation of anoth
provision of the fifth amendment of the Constitution, rather tha
whether such taking is due process of law; but it is not claime
that the statute violates that provision.

If it be the fact, as claimed, that the agreement was the result
misunderstanding and deception, and that it was not signed by th
number of adult males required by article 12 of the treaty, y
these matters do not affect the question of due process of law
They were matters for the consideration of Congress; the
51 were submitted to it; it is to be assumed that they wer
carefully considered and determined with due regard to th
public interests and the rights of the Indian; and when suc
consideration ripened into legislation, they were concluded and for
closed.

Where an objection was taken to the validity of an Indian treat
on the ground that the band were not represented by the chiefs an
head men in its negotiation, it was said by Justice Nelson: "Th
treaty after — executed and ratified by the proper authorities of th
Government becomes the supreme law of the land, and the court
can no more go behind it for the purpose of annulling its effects an
operation than they can go behind an act of Congress."

Fellows *v.* Blacksmith, 19 How., 366, 372.
Foster & Elam *v.* Neilson, 2 Pet., 307.
Florida *v.* Furman, 180 U. S., 402, 438.

It is urged that inasmuch as the act of June 6, 1900, amended th
agreement, and that such amendments were not submitted to th
Indians and concurred in by them, there has not been such meetin
of the minds of the contracting parties as to make a valid contract
If the validity of the legislation depended upon the concurrence o
the Indians in its various provisions, the objection would have grea
force; but manifestly the existence of such a necessity would be a
almost insuperable obstacle to all legislation in which their right
are concerned; it would be inconsistent with the relation that they
occupy to the Government, and in direct conflict with that sover
eignty that the United States of necessity, of right, and in fact exer
cises over them. They are not independent nations. They are
dependent "wards" of this nation "in a state of pupilage," subjec
to the control of Congress. Justice Miller says: "The power
52 of the General Government over these remnants of a rac
once powerful, now weak and diminished in numbers, i
necessary to their protection, as well as to the safety of those among
whom they dwell. It must exist in that Government because it ha
never existed anywhere else, because the theatre of its exercise i
within the geographical limits of the United States, because it ha

never been denied, and because it alone can enforce its laws on all the tribes." He also says that "after an experience of a hundred years of the treaty-making system of government, Congress has determined upon a new departure, to govern them by acts of Congress" (U. S. *v.* Kagama, 118 U. S., 375).

Congress is constantly exercising this power in some form of legislation over these dependent communities, and it has been repeatedly held that the propriety of its exercise is not a question for inquiry or determination by the courts, but belongs exclusively to the political department of the Government.

In the case of Cherokee Tobacco (11 Wall., 616) it appears that by a treaty of 1866 the right was given to every Cherokee Indian and freed person residing in the Cherokee nation to sell the products of his farm and any merchandize or manufactured products, and to ship or drive them to market without restraint, paying any tax levied by the United States on such as should be sold out of the Indian Territory. By the act of 1868, Congress extended the internal-revenue laws imposing taxes on tobacco to such articles produced anywhere within the exterior boundaries of the United States.

Justice Swayne said: "It is insisted that this section cannot
53 apply to the Cherokee nation because it is in conflict with the treaty. Undoubtedly one or the other must yield. The repugnancy is clear and they cannot stand together."

"A treaty may supersede a prior act of Congress (Foster *v.* Neilson, 2 Pet., 314), and an act of Congress may supersede a prior treaty. In the cases referred to these principles were applied to treaties with foreign nations. Treaties with Indian nations within the jurisdiction of the United States, whatever considerations of humanity and good faith may be involved and require their faithful observance, cannot be more obligatory. They have no higher sanctity, and no greater inviolability or immunity from legislative invasion can be claimed for them. The consequences in all such cases give rise to questions that must be met by the political department of the Government. They are beyond the sphere of judicial cognizance. In the case under consideration the act of Congress must prevail as if the treaty were not an element to be considered. If a wrong has been done, the power of redress is with Congress, not with the judiciary, and that body, when being applied to, it is to be presumed, will promptly give the proper relief."

In United States *v.* Kagama (*supra*) two questions were certified to the Supreme Court on division in opinion of the circuit court of the United States, district of California—first, whether the act of Congress of March 3, 1885, subjecting an Indian committing the crime of murder upon another Indian upon an Indian reservation within the limits of a State to the same laws and penalties and to trial in the same courts as are all other persons committing that crime within the exclusive jurisdiction of the United States, was constitutional; second, whether the courts of the United States
54 have jurisdiction to try such crimes. Section 2146 of the Revised Statutes of the United States expressly excepted

from the penal laws of the United States crimes committed by one Indian against the person or property of another Indian. The court held that the act did not interfere with powers of the State or the jurisdiction of its courts, and that it was within the competency of Congress, as the Indians were the wards of the nation, subject to the power of the Government. Although this act changed the jurisdiction in a matter affecting life, its constitutionality was not assailed upon that ground. In Cherokee Nation *v.* Kansas R'y Co., 135 U. S., 641, it was held that Congress, in the exercise of the right of eminent domain without the consent of the Indians, might grant the right of way to a railway company through the Indian Territory and the lands of the Cherokee nation, notwithstanding that by treaty the United States covenanted and agreed that the lands ceded to that nation should at no future time without their consent be included within the territorial limits of any State or Territory, that it would secure to that nation the right to make laws and govern themselves, and guaranteed to them the title and possession of their lands and jurisdiction over their country. It was further held that such treaties evinced no intention on the part of the Government to constitute them a separate, independent, sovereign people, with no superior within its limits, and that the Indian tribes residing within the territorial limits of the United States are subject to their authority.

In U. S. *vs.* Old Settlers, 148 U. S., 427, jurisdiction had been given the Court of Claims to determine a claim against the
55 United States by a part of the Cherokee Indians known as the "old settlers," which claim arose out of former treaties between them and the United States, by which, it was alleged, the exclusive right to certain lands was guaranteed to them forever, but that certain other Indians, under a treaty made without the knowledge or consent of the old settlers, were located upon their lands by the United States, which infringement of their rights was continually opposed and resisted by them until 1846, when, acting under duress of liberty, life, and property, advantage being taken of their dependent and impoverished condition, they were forced to make an agreement, fraudulent in character, giving them a grossly inadequate compensation for the diminution of their property rights caused by such intrusion. In giving this jurisdiction it was stated in the statute that it was the intention of the act to allow that court "unrestricted latitude" in adjusting and determining that claim, so that the rights, legal and equitable, both of the United States and of said Indians, might be fully considered and determined. It was contended that this unrestricted latitude gave the court power to inquire into the question of duress and fraud in the execution of the agreement or treaty of 1846. The Court of Claims declined to go behind this treaty on the ground that it was not within the province of a court, either of law or equity, to determine that a treaty or an act of Congress had been procured by duress or fraud, and to declare it inoperative for that reason, and that it was not the purpose of the act to confer upon that court extrajudicial powers.

Approving this doctrine, the Supreme Court, by Chief Justice Fuller, says: "There is nothing in the jurisdictional act of February 25, 1899, inconsistent with the treaty of 1846 (or any other)
56 and nothing to indicate that Congress attempted by that act to authorize the courts to proceed in disregard thereof. Unquestionably a treaty may be modified or abrogated by an act of Congress, but the power to make and unmake is essentially political and not judicial, and the presumption is wholly inadmissible that Congress sought in this instance to submit the good faith of its own action or the action of the Government to judicial decision by authorizing the stipulations in question to be overthrown upon an inquiry of the character suggested, and the act does not in the least degree justify any such inference."

One of the latest enunciations by that court is in The United States *v.* Choctaw, &c., Nations, 179 U. S., 494. These cases were suits brought in the Court of Claims under the act of Congress of March 2, 1895, giving it jurisdiction to try and determine all questions that may arise in behalf of the United States, and the Choctaw and Chickasaw nations, and the Wichita and affiliated bands of Indians, so that their rights, legal and equitable, shall be fully considered and determined. One of the important questions considered was the construction of an article in the treaty of 1866, made between the Choctaws and Chickasaws and the United States. It involved the right of those Indians in certain lands and the question whether that treaty made an absolute, unconditional cession of these lands to the United States, free of any trust, express or implied. The court states the general rules as to the interpretation of written instruments and then proceeds:

"To what extent, if at all, have these rules been enlarged or modified when the instrument to be interpreted is a treaty between the United States and Indian tribes?"

57 After citing several cases bearing upon this question, Mr. Justice Harlan, delivering the opinion of the court, says (p. 532):

"In no case has it been adjudged that the courts could by mere interpretation or in deference to its view as to what was right under all the circumstances incorporate into an Indian treaty something that was inconsistent with the clear import of its words. It has never been held that the obvious, palpable meaning of the words of an Indian treaty may be disregarded because, in the opinion of the court, that meaning may in a particular transaction work what it would regard as an injustice to the Indians. That would be an intrusion upon the domain committed by the Constitution to the political departments of the Government. Congress did not intend when passing the act under which this litigation was inaugurated to invest the Court of Claims or this court with authority to determine whether the United States had in its treaty with the Indians violated the principles of fair dealing."

Further on (p. 535) he adds:

"It is said in the present case that the interpretation of the treaty

in accordance with the views of the United States would put the Government in the attitude of having acquired lands from the Indian at a price far below their real value. Even if this were true it would not authorize the court in determining the legal rights of the parties to proceed otherwise than according to the established principles of interpretation, and out of a supposed wrong to one party evolve a construction not consistent with the clear import of the words of the treaty. If the treaty of 1866, according to its tenor and obvious import, did injustice to the Choctaws and Chickasaws,
58 the remedy is with the political depart- of the Government.

As there is no ground to contend in this case that that treaty, if interpreted according to the views of the Government, was one beyond the power of the parties to make, it is clear that even if the United States did not deal generously with the Choctaws and Chickasaws in respect of the lands in dispute—and we do not mean to say that there is any ground whatever for so contending—the wrong done must be repaired by Congress, and cannot be remedied by the courts without usurping authority that does not belong to them."

It appears to me to be plain that, because no constitutional provision is violated by the questioned legislation, and because the other grounds of assault are cognizable solely by the political department of the Government and are beyond the sphere of the judicial department, the application for preliminary injunction must be overruled.

59 *Demurrer to Bill of Complaint and Amendment Thereto.*

Filed June 21, 1901.

In the Supreme Court of the District of Columbia.

LONE WOLF, ETC., Complainants,
v.
ETHAN A. HITCHCOCK, Secretary of the Interior, *et al.*, Respondents.

No 22338, Doc. No. 50. In Equity.

Come now the respondents, and, by protestation, not confessing or acknowledging all or any of the matters and things in the complainants' bill of complaint or the amendment thereto contained to be true in such manner and form as the same are therein set forth and alleged, do demur to said bill of complaint and the amendment thereto upon and for the following grounds:

1. Said bill of complaint, with the amendment thereto, is bad in substance and does not state facts sufficient to entitle the complainants or either of them to the relief prayed for or to any relief.

2. The court has no jurisdiction over the subject-matter of the suit.

3. The complainants, as individual members of said Indian tribes, are without title to the relief prayed for or to any relief.

WILLIS VAN DEVANTER,
Solicitor for Respondents.

60 I hereby certify that, in my opinion, the foregoing demurrer is well founded in law.

WILLIS VAN DEVANTER,
Solicitor for Respondents.

UNITED STATES OF AMERICA, }
District of Columbia, } ss:

Ethan A. Hitchcock, who, as Secretary of the Interior, is one of the respondents in the above-entitled suit, being sworn, on oath says that the foregoing demurrer is not interposed for delay.

E. A. HITCHCOCK.

Subscribed in my presence and sworn to before me this 21st day of June, A. D. 1901.

[SEAL.] W. BERTRAND ACKER,
Notary Public in and for D. C.

61 *Final Decree.*

Filed Jun- 26, 1901.

In the Supreme Court of the District of Columbia.

LONE WOLF, ETC., Complainants, *vs.* ETHAN A. HITCHCOCK, Secretary of the Interior, *et al.*, Respondents.	No. 22338, Doc. 50. In Equity.

Come now the parties to this cause, by their respective solicitors, and by the agreement of the parties stated in open court this cause is at this time submitted to the court upon the demurrer of the respondents to the complainants' bill and the amendment thereto heretofore allowed, and the same being argued by counsel and the court, being fully advised in the premises, does now consider, order, and decree that the said demurrer be, and the same is hereby, sustained; and the complainants electing to stand upon their said bill and the said amendment thereto, it is, by the court, considered, ordered, and decreed that the bill of the complainants be, and the same is hereby, dismissed; that the respondents go hence without day, and that the respondents recover from the complainants their costs, to be taxed by the clerk. Whereupon the complainants take an appeal to the Court of Appeals of the District of Columbia and ask that the same be noted in this decree, which is accordingly done; and the amount of the bond to be given by the appellants to cover costs is hereby fixed at one hundred dollars, in lieu of giving which the complainants, at their option, may deposit in the clerk's office the sum of one hundred dollars to cover such costs.

Dated June 26, 1901.

A. C. BRADLEY, *Justice.*

O. K.
W. V. D.

62 *Memorandum.*

June 27, 1901.—$100.00 deposited by appellants in lieu of appeal bond.

63 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 62, inclusive, to be a true and correct transcript of the record, as prescribed by rule 5 of the Court of Appeals of the District of Columbia, in cause No. 22338, equity, wherein Lone Wolf *et al.* are complainants and Ethan A. Hitchcock *et al.* are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 27th day of June, A. D. 1901.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1109. Lone Wolf *et al.*, appellants, *vs.* Ethan A. Hitchcock *et al.* Court of Appeals, District of Columbia. Filed Jun- 27, 1901. Robert Willett, clerk.

37 WEDNESDAY, *December 4th, A. D.* 1901.

LONE WOLF, Principal Chief of Kiowas; ESHITIE, Principal Chief of Comanches; White Buffalo, Ko-Koy-Taudle, Mar-Mo-Sook-Car-Wer, Narwats, Too-Wi-Car-Ne, William Tivis, Delos K. Lone Wolf, Appellants,
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior; WILLIAM A. JONES, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office. } No. 1109.

The above-entitled cause was submitted to the consideration of the court on the printed record and briefs filed herein by Mr. Wm. M. Springer attorney for the appellants, and by Mr. Assistant Attorney General Van Devanter attorney for the appellees.

38 LONE WOLF, Principal Chief of Kiowas, and Others, Appellants,
vs.
ETHAN A. HITCHCOCK, Secretary of Interior, and Others. } No. 1109.

(Mr. Chief Justice ALVEY delivered the opinion of the court.)

The original bill in this case was filed June 6, 1901, by Lone Wolf, describing himself as chief of the Kiowa tribe of Indians, who sued as well for himself as all other members of the confederated tribes of Kiowa, Comanche, and Apache Indians, residing in the Territory of Oklahoma, against Ethan A. Hitchcock, Secretary of the Interior Department, William A. Jones, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office, to obtain an injunction against those officers. The bill was afterwards amended, whereby Eshitie, principal chief of the Comanche tribe of Indians, and certain other named Indians, members of the Kiowa, Comanche and Apache confederated tribes of Indians, residing in the Territory of Oklahoma, and delegates duly appointed by said tribes at a general council held by them, were made parties complainants, by leave of the court. The bill, however, is not filed by the tribes in their tribal capacity, but only as members of the tribes, and who claim to represent such other members of the tribes as may come in and show themselves aggrieved by what has been done by the United States. The object of the bill of complaint is to obtain an injunction to restrain the defendants from carrying into effect and operation the act of Congress approved June 6, 1900 (31 St., 672, 676), amending in some respects and ratifying an agreement between the Kiowa, Comanche and Apache tribes of Indians, whereby the Indians ceded to the United States their interest in and claim to certain lands described in the agreement, and also from carrying into effect the act of Con-
39 gress of March 3, 1901, (31 St., 1093,) making further provision as to the manner of disposing of the lands so ceded.

The preliminary injunction prayed for was refused by the court below; and the defendants appearing, entered a demurrer to the bill, and the case was heard upon the demurrer. The court, sustaining the demurrer, entered a final decree dismissing the bill, on the 26th of June, 1901, and from which decree this appeal is taken.

In the view we have of this case, it is unnecessary to state with particularity all the allegations of the bill. It will suffice to state as the result of the allegations of the bill, as was clearly stated in the opinion of the court below upon the application for the preliminary injunction, that the three confederated tribes of Indians, Kiowa, Comanche and Apache, had set apart for their absolute and undisturbed use and occupation three million acres of land under treaty proclaimed August 25, 1868, which they are at present occupying, but that their possession is threatened to be disturbed by the defendants in the enforcement of the provisions of the act of Congress approved June 6, 1900; that this act of Congress is unconstitutional and void because it will deprive the confederated tribes of their lands without their consent and against their protest; that the said act of Congress of June 6, 1900, purports to ratify a prior agreement, made and signed by commissioners on the part of the United States, and by 456 Indians, dated October 6th, 1892, but that the agreement has been amended and changed in material respects by the statute; that the changes had not been submitted to the Indians signing the agreement, for their concurrence, and that, while the treaty of 1868 provided that no treaty for the cession of any portion of the reservation should be of any force against the Indians, unless executed and signed by at least three-fourths of all the male adult Indians occupying the same, yet the agreement was signed by less than three-fourths, and that those who did sign the agreement of cession were misled by representations and false translations, and did not comprehend the nature of the agreement; that from the
40 time of the agreement down to the act of Congress mentioned the Indians repeatedly protested to Congress against the ratification of the agreement, calling its attention to these objections; and that a memorial signed by 571 Indians, who attended a general council of these tribes, which stated the substance of all these objections, was forwarded to the Commissioner of Indian Affairs, who forwarded it to the Secretary of the Interior January 5th, 1900, with the request that it be forwarded to the Committees on Indian Affairs of the Senate and House of Representatives, and it was so forwarded: That the act of June 6, 1900, and the further supplementary act of March 3, 1901, provided for the allotment to each member of the several tribes of 160 acres of land; for the setting apart of 480,000 acres for common grazing purposes; for the payment of $500,000 in cash, to be distributed *per capita*, and for the retaining and investment at 5 per cent., by the United States of $1,500,000, and the payment of interest as it accrued to the members of the tribes *per capita*; and for the opening to settlement by white people, under the proclamation of the President of the United States, of the remaining portion of said original reservation, being about 2,000,000 acres; that such opening to settlement would be made, unless re-

strained, immediately after Aug't 6, 1901; that the provisions of the act of June 6, 1900, under the circumstances, are unconstitutional and void, as the Indians will thereby be deprived of their lands without due process of law.

These are the most material facts alleged, though the bill contains many subordinate facts, which are set forth with great particularity; but we do not deem it essential to state them in this opinion. It is charged, as the result of the facts alleged, "that so much of said act of Congress of June 6, 1900, and so much of said acts supplementary thereto and amendatory thereof as provide for the ratification of said Jerome treaty, the allotment of certain lands mentioned therein to members of said Indian tribes, the surveying, laying out, and platting town sites and locating county-seats
41 on said lands and the ceding to the United States, and the opening to settlement by white men of two million acres of land, were enacted in violation of the property rights of the said Kiowa, Comanche and Apache Indians, and if carried into effect will deprive said Indians of their lands without due process of law, and that said parts of said acts are contrary to the Constitution of the United States, and are void, and confer no right, power, or duty upon the said Secretary of the Interior or upon the said Commissioner of Indian Affairs, or upon the said Commissioner of the General Land Office, to do or perform any of the acts or things required to be done and performed by said pretended acts of Congress."

The grounds upon which the application for relief is based are then summarized, and reduced to four propositions, as follows:—

First. That the said Indians were induced to sign the said treaty or agreement of cession by false and fraudulent translations, and that none of those who signed said treaty or agreement understood its provisions.

Second. That by the provisions of the treaty of settlement, proclaimed August 25, 1868, no part or portion of said lands could be ceded or alienated without the consent of three-fourths of the male adult members of said tribes; and that three-fourths of such male adults have never signed the treaty or agreement of October 6, 1892, approved by act of Congress of June 6, 1900, whereby it is claimed by the United States that said Indian tribes have ceded or alienated a portion of their said lands.

Third. That eight months prior to the time Congress pretended to ratify the said treaty or agreement of October 6, 1892, 571 adult male members of said tribes which were more than three-fourths of such male adult Indians of said tribes met in general council, in said reservation, and solemnly repudiated the said treaty or agreement, and prayed Congress to reject the same, and not to accept it as their free act and deed.

42 *Fourth.* That in the act of Congress pretending to ratify said treaty or agreement numerous amendments, changing important provisions of said agreement were made by Congress, and that said treaty or agreement was attempted to be put in force without submitting said amendment or the treaty as thus amended to the approval of said Indians.

Discovery is sought by answers to certain interrogatories incorporated in the bill; and the relief prayed is, that the defendants, in their official capacity, their agents or attorneys, "may be restrained by injunction from proceeding further against the complainants, and against said Kiowa, Comanche, and Apache Indians, and especially from proceeding further in allotting any of said lands to said Indians, in surveying, laying out, and platting town sites and county-seats on said lands, and from opening any of said lands to settlement by white people, and generally from doing or performing any of the acts or things required by said void acts of Congress."

The argument for the complainants has been urged in support of three general propositions, that is to say:—

First. That by the treaty of August 25, 1868, certain rights in the lands in question were conferred upon the Indian tribes mentioned in that treaty, of which they cannot be deprived except by their consent obtained in the manner provided for in article XII of that instrument, and that such consent has not been obtained; but in fact, as it is alleged, the apparent or pretended consent of the Indians was obtained by fraud and deception, and that the agreement was signed by less than three-fourths of all the adult male Indians.

Second. That the right of occupancy, conferred upon the Indians by the treaty of 1868, is a vested right which can be taken away or disturbed only by due process of law, and upon the payment of just compensation; and that the agreement of cession and the act of Congress ratifying and adopting that agreement do not constitute due process of law within the meaning of the Constitution.

Third. That, as a legal consequence of the preceding contentions, if they be well founded in fact, the agreement of cession and the act of Congress ratifying the same are void, and that it is within the scope of judicial power to restrain by injunction the execution and enforcement of such void acts.

43

1. The first question is, what was the effect of the agreement of cession to the United States and the act of Congress thereon, ratifying and confirming the agreement, upon the treaty made with these Indians in 1868? This question admits of but one answer. So far as the provisions of the treaty and the subsequent act of Congress may be in conflict, the treaty must yield, and the act of Congress be allowed its full operation and effect. Therefore the article XII of the treaty of 1868, cannot be appealed to as having force and operation to control the subsequent agreement of cession and the act of Congress ratifying and confirming the same. By the act of Congress of March 3, 1871, (Rev. Stat. U. S. sec. 2079) it is provided that thereafter "no Indian nation or tribe shall be acknowledged as an independent nation, tribe, or power with whom the United States may contract by treaty, but no obligation of any treaty * * * prior to March 3, 1871, shall be hereby invalidated or impaired." Therefore treaties, in the international sense, are no longer the instruments to be employed in dealing with our dependent Indian tribes, but, instead of treaties, such conventions or contracts as Congress may authorize or approve. And in this case, it is not contended, as we understand counsel for the complainants, that it was

not competent to Congress thus to provide as to the manner of dealing with or procuring cession from the Indian tribes mentioned in the treaty of 1868, in respect to the lands occupied by them under that treaty. Nor is it contended that the agreement of cession of October 6, 1892, and the act of Congress of June 6, 1900, ratifying and adopting that agreement, are not appropriate instruments for the purpose intended, within the limits and scope of the power and control of Congress over the Indians, and of the lands and reservations occupied by them under the Government of the United States;

44 and, in the absence of all alleged fraud and imposition in procuring the agreement of cession and the act of ratification by Congress, those acts would be fully and completely effective. It is, however, alleged, and earnestly contended in argument, that there has been a fraud and deception practiced upon the treaty rights of the Indians, and that by means of such fraud and deception those of the Indians who signed the agreement did so without understanding the purport and effect of the agreement, and consequently, they have been deceived. It is alleged that less than three-fourths of the male adult Indians signed the agreement, and that those who did sign it were induced to do so by false translations and misrepresentations; and that the matter of such deception was brought to the attention of Congress before the passage of the act of ratification of the agreement of cession. These are grave charges, and if they be founded in fact, there ought to be some mode of redress for the wrong. But the question is, whether the courts can afford the redress sought in this case? Acts of Congress can only be impeached and declared void by the courts for the want of constitutional authority to enact them. If there be a doubt as to the validity of the act brought into question, that doubt must be resolved in favor of the validity of the act, and against the allegation asserting its invalidity or unconstitutionality. Nor can an act of Congress be declared void and without effect because of fraudulent or improper influences exerted in procuring its passage. It makes no difference in the effect, whether the motives that influenced the passage of the act be public or personal, honest or corrupt; the courts cannot enter into the consideration of such questions. They are matters that pertain to legislative action exclusively, and with which courts have nothing to do. Therefore courts will not permit questions of improper legislative motives or questions of hardship, deception, or oppression in the effect of the act, to be raised to affect the validity of the act, but they will in all cases assume that the legisla-

45 ture was possessed of full information upon the subject of the act, and that the motives were proper that actuated the legislature in the passage of the act in question. *Fletcher vs. Peck* 6 Cranch, 87, 128; *Ex parte McCardle*, 7 Wall. 506; *Doyle vs. Ins. Co.*, 94 U. S. 535.

It is clear, therefore, that the judiciary has no control whatever over legislation, and no power whatever to question its purposes or motive, provided always that such legislation is kept within the limits of the constitutional grant of power. And from this it follows that the propriety or justice or policy of legislation, within the con-

stitutional limits, is exclusively for the legislative department to determine; for if a court were to assume to substitute its own judgment for that of the legislature, it would at once pass beyond its legitimate sphere, and enter a field where it would be impossible to set limits to its interference, except as might be prescribed in its own discretion.

It is therefore a settled axiom in jurisprudence, that an act of Congress, or of the legislature, must be accepted by the courts as made and promulgated by legislative authority; and if it be within constitutional limitation, the only remedy that can be invoked for any wrong or injury resulting therefrom, must be sought from the legislative department of the government. This principle is recognized in numerous cases, and in several recent cases in the Supreme Court of the United States. In the case *United States vs. Old Settlers*, 148 U. S. 427, 468, the court was required to pass, by act of Congress, upon a certain claim preferred by an Indian tribe against the United States, and in which a treaty with the Indians was involved. In that case it was sought to have the claimants relieved of certain provisions of the treaty, because of fraud and duress alleged to have been practiced by the United States. But the court, in disposing of the contention, said: "There is nothing in the jurisdictional act of February 25, 1889, inconsistent with the treaty of 1846, (or any other), and nothing to indicate that Congress attempted by that act to authorize the courts to proceed in disregard thereof. Un-
46 questionably a treaty may be modified or abrogated by an act of Congress, but the power to make and unmake is essentially political and not judicial, and the presumption is wholly inadmissible that Congress sought in this instance to submit the good faith of its own action or the action of the Government to judicial decision, by authorizing the stipulations in question to be overthrown upon an inquiry of the character suggested, and the act does not in the least degree justify any such inference."

The same principle has been fully adopted and applied in the very recent case of *United States vs. Choctaw & Nations*, 179 U. S. 494, 534, 535, where the subject is fully treated. In that case, in discussing the provisions of a treaty made by the United States with certain Indian nations or tribes, for the cession of lands to the United States, the court said: "But if the words used in the treaty of 1866, reasonably interpreted, import beyond question an absolute, unconditional cession of the lands in question to the United States free from any trust, then the court cannot amend the treaty or refuse to carry out the intent of the parties, as gathered from the words used, merely because one party to it held the relation of an inferior and was politically dependent upon the other, or because in the judgment of the court the Indians may have been overreached. To hold otherwise would be practically to recognize an authority in the courts not only to reform or correct treaties, but to determine questions of mere policy in the treatment of the Indians which it is the function alone of the legislative branch of the Government to determine."

The principle which forbids the courts from going behind a treaty or an act of Congress for the purpose of annulling its effect and

operation, is nowhere more clearly stated than by Mr. Justice Nelson in the case of *Fellows vs. Blacksmith et al.*, 19 How. 366, 372. In that case the contention was that the Indians were not represented by their chiefs and head men of the band in the negotiation of the treaty, and therefore the treaty was invalid. But the court
47 said: "An objection was taken, on the argument, to the validity of the treaty, on the ground that the Tonawanda band of the Seneca Indians were not represented by the chiefs and head men of the band in the negotiations and execution of it. But the answer to this is, that the treaty, after executed and ratified by the proper authorities of the Government, becomes the supreme law of the land, and the courts can no more go behind it for the purpose of annulling its effect and operation, than they can go behind an act of Congress." Citing, 1 Cranch 103. 6 Pet. 735; 10 How., 442; 2 Pet. 307, 309, 314; 3 Sto. Const. Law, p. 695.

The agreement of cession in this case, after it was duly ratified and confirmed by Congress, has the same conclusive force and effect as a treaty ratified and approved by the Senate; and here we have also the conclusive effect and operation of an act of Congress which the courts cannot go behind of or impeach for alleged fraud and deception practiced upon the Indians in procuring from them the agreement of cession of the land in question.

This would seem to be a full answer to the application made by the bill, and we might stop here and affirm the decree of the court below. But the second ground taken in support of the claim for the relief prayed for has been urged with a good deal of earnestness, and we therefore deem it proper to give that contention brief consideration.

2. By this second ground of contention it is attempted to be maintained that the right of occupancy conferred upon the Indian tribes by the treaty of 1868, was or is a vested right of property of which they could not be divested, or cannot be deprived of the enjoyment thereof, without due process of law and upon payment of just compensation; and that the agreement of cession and the act of Congress ratifying the same do not constitute due process of law.

Clearly, there is no authority for this contention. The Indians within the United States or their jurisdiction, have, from the earliest period of the Government, been regarded and treated
48 as the mere wards of the Government, and the lands and reservations occupied by them have been assigned to them by the United States as places of domicile for the tribes, and they hold and occupy such lands with the assent of the United States, and under their authority. Such lands and reservations are held by the Indians subject to the control and dominion of the United States, and such Indian tribes are subject to be changed from one locality or reservation to another, as may best serve the purposes and policy of the Government in the administration of Indian affairs. They have no title in the lands they occupy, except in certain cases where treaties of settlement may have conferred a title in the land; their right is simply to occupy, at the will of the Government and under its protection. As was said by the Supreme Court, in the

case of *United States vs. Kagama*, 118 U. S. 379, "The power of th
General Government over these remnants of a race once powerfu
now weak and diminished in numbers, is necessary to their prote
tion, as well as to the safety of those among whom they dwell.
must exist in that Government, because it has never existed an
where else,—because the theatre of its exercise is within the ge
graphical limits of the United States,—because it has never bee
denied, and because it alone can enforce its laws on all the tribes
Keeping in mind, therefore, the dependent relation of the India
tribes to the United States, and the nature of the right under whic
they occupy the lands assigned to them, it is quite clear there is
room for the application of the principle of due process of law as b
tween the Indians and the United States, in a case such as the pre
ent. The question is not of a private right, but is of a public qual
fied right of occupancy by the Indian tribes, and no portion of th
Indians can set up or assert any mere individual right as a veste
right in the lands as against the Government. The power and co
trol over the subject-matter is vested in Congress, and is therefore
political as distinguished from a judicial subject of inquiry. Th
agreement of cession and the act of Congress ratifying an
49 adopting such agreement, stand as the deliberate legislati
judgment upon the subject, and no matter what terms w
may apply to those acts, whether due process of law or some oth
terms, the agreement of cession as ratified, and the act of Congre
ratifying the same, are conclusive, (Murray's Lessee *vs.* Hoboke
Land Ins. Co., 18 How. 272, 285,) and no judicial inquiry can be a
lowed to bring those acts into question,—the subject-matter bein
plainly within the limit of congressional power.

Without further notice of the positions urged on behalf of th
complainants; and without passing upon the motion entered by th
defendants to dismiss the appeal of the appellants, we shall affir
the decree of the court below; *and it is so ordered. Decree affirme*

50 TUESDAY, *March 4th, A. D.* 1902.

LONE WOLF, Principal Chief of Kiowas; Eshitie, Principal Chief of Comanches; White Buffalo, Ko-Koy-Taudle, Mar-Mo-Sook-Car-Wer, Narwats, Too-Wi-Car-Ne, William Tivis, Delos K. Lone Wolf, Appellants,

vs.

ETHAN A. HITCHCOCK, Secretary of the Interior; William A. Jones, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office.

January Term, 190
No. 1109.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record fro
the supreme court of the District of Columbia, and was argued
counsel. On consideration whereof, it is now here ordered, adjudg

and decreed by this court that the decree of the said supreme court, in this cause, be and the same is hereby, affirmed, with costs.

Per MR. CHIEF JUSTICE ALVEY.

March 4, 1902.

51 In the Court of Appeals of the District of Columbia, January Term, 1902.

LONE WOLF ET AL., Appellants,
vs.
ETHAN A. HITCHCOCK ET AL., Appellees. } No. 1109. In Equity.

Motion for Re-argument.

Now come the complainants in the above-entitled cause, by William M. Springer their solicitor, and move the court for leave to re-argue this case, for the reasons following:

First. The court, in its opinion in this case, filed on the 4th day of March, 1902, inadvertently misstated the second ground of contention of counsel for appellants in the following extract from said opinion:

"By the second ground of contention it is attempted to be maintained that the right of occupancy conferred upon the Indian tribes by the treaty of 1868 was or is a vested right of property of which they could not be divested or cannot be deprived of the enjoyment thereof without due process of law and upon payment of just compensation; and that the agreement of cession and the act of Congress ratifying the same do not constitute due process of law."

The second contention of counsel for appellants is stated on page 2 of the reply brief, and is to the effect that an agreement between the United States and an Indian tribe by which lands are ceded or the right to their use and occupancy is guaranteed is a contract, which is binding upon both parties, and cannot be abrogated or annulled without the consent of both parties.

Second. The court in its opinion omitted any reference to authorities cited in appellants' brief, which show conclusively "that the Indian right of occupancy to lands can only be extinguished by the voluntary consent of the Indians." (16 Am. and Eng. Encyc. of Law, second edition, pages 230–231), and that "the right of
52 the Indians to their occupancy is as sacred as that of the United States to the fee." (U. S. *vs.* Cook, 19 Wallace, pages 292–'3.)

Third. The court erred in stating that the "Indian tribes are subject to be changed from one locality or reservation to another as may best serve the purposes and policy of the Government in the administration of Indian affairs;" and that "they have no title in the lands they occupy, except in certain cases where treaties of settlement may have conferred a title in the land; their right is simply to occupy at the will of the Government and under its jurisdiction."

In Senate Document No. 76, first session, 56th Congress, page 5,

the Commissioner of Indian Affairs, in an official letter to the Secretary of the Interior, referring to the Medicine Lodge treaty in question, said:

"In all our dealings with the Indian tribes, I do not find that any agreement has been ever amended by the Congress without providing for the assent of the Indians interested." (See all of page 5 of said Senate document.)

This statement is historically correct, as is shown by the numerous treaties and agreements with Indians which have been made and executed from the foundation of the Government to the present time.

Fourth. This case has not been argued orally, upon the record as it now stands, but was submitted by agreement upon printed briefs.

Counsel for appellants therefore respectfully ask this honorable court to again consider the record in this case and to grant a rehearing in order that this case may be argued orally before this honorable court, and the whole matter again be considered.

Respectfully submitted.

WILLIAM M. SPRINGER,
Counsel for Appellants.

(Endorsed:) No. 1109. Court of Appeals, D. C., Jan'y term, 1902. Lone Wolf *et al.*, appellants, *vs.* Hitchcock, Sec'y, &c., *et al.* Motion for re-argument. Court of Appeals, District of Columbia. Filed Mar. 6, 1902. Robert Willett, clerk.

53 LONE WOLF, Principal Chief of Kiowas, and Others, Appellants, *vs.* ETHAN A. HITCHCOCK, Secretary of Interior, and Others. } No. 1109.

Opinion on Motion for Reargument.

(Mr. Chief Justice ALVEY delivered the opinion of the court.)

The motion for re-argument in this case fails to bring to our view any matter that we have not already fully considered; and therefore we find nothing in the reasons assigned for re-argument that would justify the granting the motion. We had supposed that when this court determined, as it did, that it had no power or jurisdiction to go behind the acts of Congress, ratifying the agreement of cession made by the Indians to the United States, and providing for the distribution and settlement of the lands ceded, to find grounds for declaring those acts null and void, that we had virtually decided the case against the complainants, and that their bill must necessarily be dismissed. But without making a question as to that controlling view of the case, the complainants, in their motion for re-argument, have suggested that this court has not treated the title of the Indians to the lands ceded to them by the treaty of 1868 as being anything more than a mere title by occupancy under and

in subordination to the power and control of the Congress of the United States. The treaty of 1868 certainly did not vest in the Indians, either in their individual or tribal capacity, anything more than the right to occupy the lands as against the United States until it was found necessary to make other provision for them. There was no grant of estates either of freehold or leasehold; only a mere right to occupy and use the lands, according to the habits and customs of the Indians; but those rights of the Indians were sacred to them as against every one, until Congress made provision
54 for assuming control over the lands, and making other disposition thereof, upon such terms and conditions as Congress should prescribe.

The contention of the complainants in this respect, as stated in the brief of their counsel, is this:—

"Indians occupying lands in this country under provisions of treaties with the United States cannot be deprived of the use and occupancy of such lands without their consent except by due process of law; and such lands cannot be taken from them except in compliance with the treaty provisions under which such lands were acquired. The right of the Indians as to their occupancy is as sacred as that of the United States to the fee."

We hold that it is not a judicial question of due process of law, to be determined by the courts, but that it is a political question for the determination by Congress; and Congress having acted with all the facts before it, including the memorial and protest of the Indians against the act of ratification, that act of ratification is final and conclusive, and the courts have no power or jurisdiction over the subject.

The case is of a nature that can be taken to the Supreme Court of the United States, and we shall be greatly gratified if that high tribunal may be able to find a way for affording a remedy for what is alleged to be a grievous wrong to the Indians. *Motion for re-argument overruled.*

55 FRIDAY, *March 14th, A. D.* 1902.

LONE WOLF, Principal Chief of Kiowas; Eshitie, Principal Chief of Comanches; White Buffalo, Ko-Koy-Taudle, Mar-Mo-Sook-Car-Wer, Narwats, Too-Wi-Car-Ne, William Tivis, Delos K. Lone Wolf, Appellants,

vs.

ETHAN A. HITCHCOCK, Secretary of the Interior; William A. Jones, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office.

No. 1109. January Term, 1902.

On consideration of the appellants' motion for a re-argument in the above-entitled cause, it is by the court now here ordered that said motion be, and the same is hereby, overruled.

Per MR. CHIEF JUSTICE ALVEY.

March 14, 1902.

LONE WOLF, Principal Chief of Kiowas; ESHITIE, Principal Chief of Comanches; White Buffalo, Ko-Koy-Taudle, Mar-Mo-Sook-Car-Wer, Narwats, Too-Wi-Car-Ne, William Tivis, Delos K. Lone Wolf, Appellants,
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior; William A. Jones, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office.
No. 1169.

On motion of Mr. Wm. M. Springer of counsel for the appellants in the above-entitled cause, it is ordered by the court that said appellants be allowed an appeal to the Supreme Court of the United States. And it is further ordered that said appellants deposit with the clerk the sum of one hundred dollars for costs, in lieu of bond.

Memorandum.

March 17, 1902.—$100. deposited for costs in lieu of bond.

56 UNITED STATES OF AMERICA, *ss:*

To Ethan A. Hitchcock, Secretary of the Interior; William A. Jones, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Lone Wolf, principal chief of Kiowas; Eshitie, principal chief of Comanches; White Buffalo, Ko-Koy-Taudle, Mar-Mo-Sook-Car-Wer, Narwats, Too-Wi-Car-Ne, William Tivis, Delos K. Lonewolf, are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 17th day of March, in the year of our Lord one thousand nine hundred and two.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted March 17, 1902.
WILLIS VAN DEVANTER,
Assistant Attorney General.

[Endorsed:] Court of Appeals, District of Columbia. Filed Mar. 17, 1902. Robert Willett, clerk.

57 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 56, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Lone Wolf, principal chief of Kiowas, Eshitie, principal chief of Comanches, White Buffalo, Ko-Koy-Taudle, Mar-Mo-Sook-Car-Wer, Narwats, Too-Wi-Car-Ne-William Tivis, Delos K. Lonewolf, appellants, *vs.* Ethan A. Hitchcock, Secretary of the Interior, William A. Jones, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office, No. 1109, January term, 1902, as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 17th day of March, A. D. 1902.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 18,454. District of Columbia Court of Appeals. Term No. 601. Lone Wolf, principal chief of Kiowas, *et al.*, appellants, *vs.* Ethan A. Hitchcock, Secretary of the Interior, William A. Jones, Commissioner of Indian Affairs, and Binger Herman, Commissioner of the General Land Office. Filed March 18th, 1902.

30013

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

LONE WOLF, PRINCIPAL CHIEF OF KIOWAS, *et al.*, *Appellants,* v. ETHAN A. HITCHCOCK, SECRETARY OF THE INTERIOR, *et al.*	*No.* 601. *In Equity.*

MOTION TO ADVANCE.

Come the said appellants and move this honorable court to advance this cause upon the docket, and hear it at as early a day during the present term as the convenience of the court will permit, and for the reasons therefor, they state:

First. Because the case involves the constitutionality of the act of Congress of June 6, 1900, which purported to ratify an agreement with the Kiowa, Comanche, and Apache Indians, in Oklahoma, and to purchase and open to settlement about two million acres of their surplus lands. The Indians deny that they agreed to sell, or that they did sell their lands to the United States, and

pray an injunction to restrain appellees from carrying out the provisions of the said act, and other acts relating thereto, which provide for opening the lands to settlement and for town-sites, appropriation to pay for same, and individual allotments.

Second. Because the court below has denied an injunction *pendente lite*, and that the appellees are proceeding to carry the act of Congress into force, regardless of the pendency of this cause on appeal; and unless this cause is advanced and decided at an early date the acts which appellants seek to restrain may all have been performed, and they will suffer irreparable injury by reason of the delay in the final hearing and determination of the cause, notwithstanding the fact that this court may finally hold that they have been unjustly and unlawfully deprived of their lands.

Third. Because the interests involved in this case are of a general public nature, affecting the peace, order, and contentment of the Indian tribes, whose relations to the Government are seriously disturbed by the result reached by the court below, and it is, therefore, a case in which the United States are concerned.

Fourth. Because the action contemplated by the Secretary of the Interior, the Commissioner of Indian Affairs, and the Commissioner of the General Land Office, will destroy conditions which have existed since 1868.

Fifth. Because doubt as to the right to act will embarrass the action of the Interior Department and lead either to intolerable uncertainty or to the hasty performance of acts, which, if done, will result in irremediable wrong and damage.

Sixth. Because it is uncertain what complications might arise during the period elapsing before the case could be heard in regular course; it being possible that serious

outbreaks might occur, involving property, or even the loss of life or limb.

Seventh. Because the remedy sought is by injunction and irremediable injuries are threatened.

Respectfully submitted.

WILLIAM M. SPRINGER,
HAMPTON L. CARSON,
Solicitors for Appellants.

Service of notice of the foregoing motion to advance is hereby acknowledged this 22d day of March, 1902.

J. K. RICHARDS,
Solicitor General.

Office Supreme Court U. S.
FILED
OCT 23 1905

In the

Supreme Court of the United States

October Term, 1905

No. 274

Filed October 1905

Lem Woo, Plaintiff (Appellant) v. Thomas Williams, Chief of Commissary; Wong Sing, [illegible]; Mah Ma Sing, Sub-Wan, Sub-Wan, Commissioners, Etc., also Tom, Deputy U. Immigrant, Appellees.

Brief & Argument of Appellant.

Appeal from the Court of Appeals for the District of Columbia.

Brief and Argument of Appellant.

HAMPTON L. CARSON,
WILLIAM W. [illegible],
Counsel for Appellant.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 275.

LONE WOLF, Principal Chief of the Kiowa Indians *et al.*, *Appellants*,

v.

ETHAN A. HITCHCOCK, Secretary of the Interior *et al.*

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF AND ARGUMENT OF APPELLANTS.

STATEMENT OF FACTS.

On the 6th of June, 1901, Appellant, Lone Wolf, filed in the Supreme Court of the District of Columbia his Bill of Complaint against the Respondents in this case. (Record, pp. 1 to 15.)

The Bill was amended by leave of Court by the addition of the Appellants as parties complainant as prayed. (Record, p. 25.)

The Bill, as thus amended, presents the facts in this

case fully and in detail, to which the attention of this Court is respectfully requested. A brief summary of the facts is as follows:

a. Appellants are members of the confederated tribes of Kiowa, Comanche, and Apache Indians, and reside on their reservation in the southwestern part of the Territory of Oklahoma. They preserve their tribal organizations for business purposes pertaining to their tribes, but have no existence as a body politic; hence they sue as well for themselves as for all other members of the said tribes. A general council of said tribes was held in said Territory in June, 1901, which authorized appellants to resort to all legal means necessary to prevent the opening of their lands to settlement by white people, and this authority was given in the only manner known to said tribes. (Record, pp. 20–21.)

b. Prior to the year 1868, the said tribes were in possession of large tracts of country in the State of Kansas and elsewhere, and the United States Government, desiring to purchase said lands by exchanging other lands therefor, a treaty was concluded at a council on Medicine Lodge Creek, in Kansas, in 1867, which was proclaimed August 25, 1868. By this treaty about three million acres of land on which Appellants now reside, situated in Oklahoma Territory, were set apart for the absolute and undisturbed use and occupation of said tribes, and by the terms of the treaty no persons, except those therein specially authorized to do so, were ever to be permitted to pass over, settle upon, or reside in the said reservation. The Indians, in consideration of the advantages and benefits conferred by said treaty and the many pledges of friendship by the United States, stipulated that they would relinquish all right to occupy the territory outside said reservation; that they would withdraw all opposition

to the construction of certain railroads mentioned in said treaty, and would refrain from all acts of hostility to white persons, or to their property, and would withdraw all opposition to the establishment of military posts in the Western Territories.

c. The 12th article of said treaty was to the effect that no treaty for the cession of any portion or part of the said reservation, which was to be held in common, should be of any validity or force as against the said Indians, "*unless executed and signed by at least three-fourths of all the adult male Indians occupying the same.*"

d. After the promulgation of the treaty, the Indians removed to and settled upon said reservation and they have since resided thereon; they have kept, on their part, all the promises and agreements contained in said treaty, and they have never agreed or consented to relinquish their right to occupy said lands or signed any treaty for that purpose as provided in said article twelve. In the year 1892 a commission of three persons, claiming to represent the United States, came to said reservation and sent for and brought before them certain members of said tribes to whom false and fraudulent representations were made, whereby 456 members of said tribes were induced to sign a paper, which they were informed was a treaty or agreement with the United States in reference to their lands, which is now known as the Jerome treaty. The interpreters were employed by the said commission, but instead of faithfully and truly translating said treaty they falsely and fraudulently misrepresented its provisions, so that as signed it did not express the wishes of the tribes. One of the interpreters and the wife of the other were adopted into the tribes, and made equal in the distribution of the lands and moneys of the tribe; the Indian agent falsely represented to the Interior Department that

three-fourths of the adult male members of the tribe had signed said treaty, whereas by a census of the Indians taken about that time for the purpose of making a *per capita* payment to said Indians, it appeared that twenty-three less than three-fourths thereof had signed the same. These facts were reported to Congress by the Secretary of the Interior, Mr. Hitchcock (Senate Doc. 76, first session, 56th Congress), who expressly stated in his report that the 12th article of the Medicine Lodge treaty "precludes a less number than three-fourths of the adult male members of the tribes from ceding their lands."

e. Soon after the signing of the Jerome treaty, some of said Indians learned that the provisions of the treaty had not been correctly and truly translated to them, and they at once proceeded to make known to the members of said Commission that they had been deceived and that they desired to withdraw their names; instead of being permitted to do so, they were threatened with violence if they persisted in their opposition to said treaty. The Indian tribes sent delegates to Washington at each session of Congress since 1892, when said treaty was signed, to protest against the ratification of said treaty, except to the last Congress, and they would have sent delegates to that Congress had they not been informed by the Indian agent that the opposition of the Interior Department and their own prior protests would cause Congress to ignore the same, and that hence there was no necessity to incur the expense of sending a further delegation.

f. On the 9th of October, 1899, there was a general council of tribes held at Mount Scott on their reservation, at which 571 adult male members of said tribes were present; the Jerome treaty was fully discussed and all of the Indians present, which was nearly the full adult male membership of said tribes, signed a memorial repudiating

said treaty, and asking Congress to "cast it out and not accept it as their free act and deed." This memorial was approved by the Indian agent as representing their sentiments and wishes, and was forwarded to Washington; the Secretary of the Interior, Mr. Hitchcock, transmitted the memorial to Congress, together with a letter from the Commissioner of Indian Affairs, Mr. Jones, in which letters said memorial was fully approved and the rejection of said treaty recommended.

g. But few of the Indians can either speak or understand the English language, and in the making and signing of said treaty they relied implicitly upon the good faith of said commission and their interpreters, and when signed, they believed said treaty fully and faithfully represented their wishes.

h. The price to be paid for said two million acres of said surplus lands was fixed by Congress at one dollar an acre, or two million dollars, whereas the interpreters represented to them that when sold, at some time in the future, the treaty provided that they should receive $2.50 per acre therefor.

i. Congress, when assuming to ratify said treaty, changed its provisions in several important particulars, as is fully pointed out in said Bill of Complaint (Record, pp. 9 to 11), and in the ratifying act provided as follows: "Said agreement be, and the same hereby is, accepted, ratified, and confirmed, *as herein amended*." The Act ratifying said treaty contained other provisions, not inserted therein, but made applicable thereto, which put in force, in said reservation, the mining laws of the United States, and other provisions conferring jurisdiction upon the Court of Claims to adjudicate certain questions affecting the title to their said lands, and providing for laying out counties, towns, and opening their said lands,

to the extent of about two million acres, to settlement by white people.

j. So much of said Act of Congress of June 6, 1900, which assumed to ratify said treaty, and so much of other acts of Congress as provide for the allotment of certain of their lands, the surveying, laying out, and plotting of town-sites and locating county-seats on said lands, and the ceding to the United States and opening to settlement by white people of two million acres of said lands, were enacted in violation of the property rights of said Indians, and, if carried into effect, will deprive said Indians of their lands without due process of law. These acts and parts of acts are contrary to the Constitution of the United States and are void and confer no right, power or duties upon the Respondents in this case, to do or perform any of the things enjoined or required by said unauthorized acts of Congress for the following reasons:

"*First.* That the said Indians were induced to sign the said treaty by false and fraudulent translations, and that none of those who signed said treaty understood its provisions.

"*Second.* That by the provisions of the Medicine Lodge treaty no part or portion of said lands could be ceded or alienated without the consent of three-fourths of the adult male members of said tribes, and that three-fourths of such male adults have never signed said Jerome treaty or any other treaty or agreement by which they ceded or alienated any portion of their said lands.

"*Third.* That eight months prior to the time Congress assumed to ratify said Jerome treaty 571 adult male members of said tribes, which were more than three-fourths of such number, met in general council, with the approval of the Secretary of the Interior and the Indian agent at Mount Scott, in said reservation, and solemnly repudiated the said treaty and prayed Congress 'to cast it out and not accept it as their free act and deed.'

"*Fourth*. That in the act of Congress assuming to ratify said Jerome treaty numerous amendments, changing important provisions of said treaty, were made by Congress, and that said treaty was attempted to be put in force without submitting said amendments or the treaty as thus amended to the approval of said Indians." (Record, p. 13.)

k. Notwithstanding said acts of Congress are unconstitutional and void and impose no duties or authority whatever upon the Respondents to enforce the same, yet they are now engaged in carrying said void acts into effect, and are thereby threatening said Indians with loss of their property and lands, in violation of the Constitution of the United States and the solemn treaty provisions by which they acquired said lands. Unless restrained by this Honorable Court the Respondents will cause irreparable injury, wrong, oppression and loss of the property rights of said Indians.

l. The Respondents were required to answer under oath the allegations of the Bill; and a writ of injunction was prayed for, commanding said Respondents their agents, and employés, and all officers of the United States acting under their authority, to desist absolutely and refrain from proceeding farther against Complainants and said Indians in the carrying into effect of said void acts of Congress. It was averred that said Indians are wholly without remedy at law, and that the relief prayed for must be granted at once, otherwise they will sustain irreparable injury and loss of property of immense value; a temporary injunction, pending litigation, was therefore prayed, and such other and farther relief as the nature of the case might require, and that upon a final hearing the said injunction might be made perpetual.

On the 21st of June, 1901, the application for a temporary injunction, as prayed for in the Bill, came on for

hearing, and the same was by the Court denied. (Record, p. 25.) And, thereupon, *eo die*, Respondents filed in Court their demurrer to said Bill and to the amendment thereto. (Record, p. 34.)

On the 26th of June thereafter, by agreement of parties in open Court this cause was submitted to the Court upon the said demurrer, and the Court sustained the same; and Complainants electing to stand on their said bill and the amendments thereto, it was considered, ordered, and decreed by the Court that said bill be dismissed. Whereupon the Complainants took an appeal to the Court of Appeals of the District of Columbia, and this fact was noted in the decree. (Record, p. 35.) The opinion of the Court below on refusing the application for a preliminary injunction is printed in the Record, pp. 26 to 34.

On the 4th of December, 1901, the case was submitted to the Court of Appeals of the District of Columbia on the printed record and briefs, and on the 4th of March, 1902, the Court of Appeals entered an order to the effect that the decree of the Supreme Court of the District of Columbia be affirmed. The opinion of the court by Chief Justice Alvey is printed in the Record, pages 37 to 44.

On the 6th of March, 1902, counsel for appellants submitted a motion for a rehearing, which motion is printed in the Record, pages 45–46. On the 14th of March, 1902, the motion for a rehearing was overruled. The opinion of the court in overruling the motion is printed in the Record, pages 46–47.

On the same day an appeal was allowed to the Supreme Court of the United States (Record, page 48).

A Fundamental Error.

First. The fundamental error of the Court of Appeals of the District of Columbia is found in the following extract from the opinion of the Court (Record, page 43):

"The Indians within the United States or their jurisdiction have, from the earliest period of the Government, been regarded and treated as the mere wards of the Government, and the lands and reservations occupied by them have been assigned to them by the United States as places of domicile for the tribes, and they hold and occupy such lands with the assent of the United States and under their authority. Such lands and reservations are held by the Indians subject to the control and dominion of the United States, and such Indian tribes are subject to be changed from one locality or reservation to another, as may best serve the purposes and policy of the Government in the administration of Indian affairs. They have no title in the lands they occupy, except in certain cases where treaties of settlement may have conferred a title in the land; their right is simply to occupy at the will of the Government and under its protection."

Second. This is an historical error and ignores the feature of Indian consent. In no instance has the United States regarded the Indian right of occupancy of land as simply a right to occupy at the mere will of the Government. Especially is this true in all cases where the right of occupancy was secured by treaty or agreement between the Indians and the United States. All treaties and amendments by the Senate, or agreements, ratified by Congress since 1873, which affected the Indian right of occupancy of land, *have been submitted to the Indians for their approval or rejection.* No land, occu-

pied by Indians under treaties or agreements, has ever been taken away from them by the Government, *except with their consent*, given in a written treaty or agreement, until the taking, in the case at bar, of the lands of the Consolidated Tribe of the Kiowa, Comanche and Apache Indians by the Act of Congress of June 6, 1900.

Third. The Honorable William A. Jones, the present Commissioner of Indian Affairs and one of the Respondents in the case at bar (in an official letter to the Secretary of the Interior, dated January 5, 1900, in which he advised against the then pending Act of Congress to ratify the so-called Jerome Treaty, which embraced the lands in question in the case at bar), said:

"This title is misleading, inasmuch as it is not an Act to ratify and confirm an agreement, but to amend an agreement, without the consent of one of the contracting parties thereto.

"It is certainly a novel proposition in law that one party to an agreement may, without the consent of the other, alter or modify an essential part of such contract. *It is apparent that no court of law would uphold or enforce any contract so altered or amended.*

"In all dealings with the Indian tribes I do not find that any agreement has ever been 'amended' by the Congress without providing for the assent of the Indians interested. In one or possibly two cases Congress has entirely ignored an agreement for the cession of lands upon the ground that the Indians, parties thereto, were not the owners of the lands ceded, but it has never attempted to write in new and different words in a signed agreement, without providing that the amendment should be open to rejection or adoption by the Indians interested.

"A number of cases are found in the statutes where agreements have been so amended, but in every case provision has been made for re-submitting the agreement as amended for the consideration of the Indians. I mention three such cases:

"In ratifying the agreement made by Commissioners John V. Wright, Jared W. Daniels, and Charles F. Larrabee, on behalf of the United States, with the Indians of the Fort Berthold Agency, Congress amended article 6 of said agreement, and provided that—

"'This act shall take effect only upon the acceptance of the modification and changes made by the United States as to article 6 of the said agreement by the said tribe of Indians, in manner and form as said agreement was assented to, which said acceptance and consent shall be made known by proclamation by the President of the United States upon satisfactory proof presented to him that said acceptance and consent have been obtained in such manner and form.' (26 Stats. 1035.)

"The agreement between the Commissioners on behalf of the United States and the Cherokee Nation, concluded December 19, 1891, which provided for the cession by the said nation to the United States of all the lands known as the 'Cherokee Outlet,' was ratified with amendments. (27 Stats. 641).

"To provide against the possible contention that the amended agreement was not the contract consented to by the Cherokee Nation, Congress provided—

"'That the acceptance by the Cherokee Nation of Indians of any of the money appropriated as herein set forth shall be considered and taken, and shall operate as a ratification by said Cherokee Nation of Indians of said agreement as it is hereby proposed to be amended, and as a full and complete relinquishment and extinguishment of all their title, claim, and interest in and to said lands.'

"As a matter of fact the amendments proposed by Congress in the act of March 3, 1893, were formally concurred in by the Cherokee Nation on April 3, 1893.

"The agreement with the Shoshone and Arapaho tribes of Indians in Wyoming was ratified by section 12 of the act of June 7, 1897 (30 Stats., 93), which section commences as follows:

"'That the following amended agreement with the Shoshone and Arapahoe tribes of Indians in the State of Wyoming is hereby accepted, ratified, and confirmed, and

shall be binding upon said Indians when they shall in the usual manner agree to the amendment herein made thereto.'

"A further examination of the statutes shows that prior to 1873, when the relations of the Government and the Indian tribes were under treaties, all amendments made by the Senate to treaties presented by the Executive for its consideration were submitted to the Indians for their concurrence before they were deemed to be in effect, *and it does not appear anywhere in the statutes, so far as this office has been able to ascertain, that this Government has assumed the authority to change or amend a treaty or agreement with an Indian tribe, and to put the amended or changed agreement or treaty into effect without the consent of the tribe interested.*" (House Ex. Doc. No. 333, 1st Session, 56th Congress, pp. 4 and 5.)

Fourth. It thus appears that there is no instance on record where the Government has ever deprived the Indians of the occupancy of land held by treaty or agreement with the United States, except in pursuance of another written treaty or agreement, and even amendments to such treaties, or agreements proposed by the Senate or Congress, have been submitted to the Indians for their approval, before taking effect.

Fifth. The letter containing the foregoing statement of Commissioner Jones was transmitted to Congress January 22, 1900, by the Secretary of the Interior, one of the Respondents in this case, in a letter giving his opinion that the Jerome agreement should not be ratified, and stating that there are other reasons for its rejection, equally as potent, pointed out by the Commissioner of Indian Affairs in the foregoing letter, "which deserve serious consideration." Commissioner Jones is corroborated by the legislative history of the United States, of which this court will take judicial knowledge. At the last session of Congress (first session of 57th) at

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least three agreements with Indian tribes were ratified by Congress with amendments, and the amended agreements were submitted to the Indians for ratification or rejection. On the 1st of March, 1901, Congress ratified an agreement with the Cherokee tribe of Indians with amendments, and the amended agreement was submitted to the Cherokee voters for ratification or rejection. It was rejected by the Indians by a popular vote, and at the next session of Congress another amended agreement with said Indians was ratified by Congress, was submitted to the Indians and ratified by them at a popular election held August 7, 1902. Attention is called to a volume of Indian Treaties published by the United States of the size and style of binding of the Revised Statutes, containing 1,053 pages. In this volume will be found a "Compilation of all the treaties between the United States and the Indian Tribes now (1873) in Force." It does not contain those treaties which have become obsolete or which have been superseded by other treaties. The oldest treaty which is published in this volume (pages 25 to 28) was concluded with the Cherokees, November 22, 1785, during the Government under the Articles of Confederation. The boundaries of the Cherokee lands were fixed in this treaty; and *from that day to this the United States has never taken or occupied any lands, the occupancy of which was granted to said Indians, without first having obtained their consent in a written treaty or agreement.* And so it has been with the other Indian tribes in this country, as will appear by the numerous treaties published in said volume. Before the Revolutionary War the Indian occupancy was always respected by the British Government, and the Colonial Governments, and the original right of occupancy was never surrendered, except by treaties with the Indians.

Sixth. In support of this proposition the following authorities are cited:

Under the title of "Indians," the American and English Encyclopedia of Law, Second Edition, page 229, contains the following language taken from the text:

"Indian Lands. Nature of Indian Title. Following the policy adopted by the European nations in respect to their American possessions, the Colonial Governments recognized in the Indian tribes a possessory right to the land occupied by them, but asserted in themselves the ultimate title to the soil. Since the Revolution the original States as to lands within their respective jurisdictions, and the United States as to all other lands, have adopted the same policy. The Indians have a right to the use and occupancy of the land, subject to the dominion and control of the State or the United States, but they are not permitted to sell or transfer their right to the land without the consent of the dominant powers, while on the other hand this right can be extinguished only by the voluntary consent of the Indians."

A note to this proposition in the text is supported by the citation of thirteen cases decided by the Supreme Court of the United States, and by opinions in twelve States, in the Territory of Oklahoma and in the Dominion of Canada. (See 16 Am. and Eng. Encyc. of Law, Second Edition, page 230.) And further, in the text of the same volume, under the title, "Extinguishment of Indian Title," this language is used:

"As has already been stated, the Indian title to land can be extinguished only by the consent of the Indians, and by its surrender by them to the United States. Numerous treaties have been entered into between the United States and the various Indian tribes, by which the Indians have ceded their right to the lands occupied by them to the United States, in exchange for money and

ther lands, the land so ceded being then opened for set-lement. So also the original States, both before and after he adoption of the Federal Constitution, assumed the ight of entering into treaties with the Indian tribes for he extinguishment and acquisition of their title to lands within their respective jurisdictions."

A note to this text cites in its support numerous Fed-eral and State authorities (*Id.* page 232).

Seventh. The case of Strong *v.* Waterman, 11 Paige (N. Y.) Chancery Reports, 607, was cited among others, and it is a conclusive authority on this point. The opin-ion was by Chancellor Walworth, whom Mr. Justice Story pronounced, in his lifetime, "the greatest Equity Jurist living." The distinguished Chancellor, delivering the opinion of the court in that case, said:

"The right of the Indians in this State to the use, pos-session, and occupancy of the lands of their respective reservations, which have not been by them voluntarily ceded to the people of the State, or granted to individuals with the assent of the State, does not, at this time, admit of doubt. The ultimate fee of the land is undoubtedly in the State, or its grantees; but the right of the Indians to the beneficial use and occupancy thereof, until they think proper voluntarily to relinquish and abandon that right, has been too long recognized in this State to be now called in question."

Eighth. If it were true, as a matter of legislative and administrative history, as was stated by Chief Justice Alvey, in the opinion of the Court of Appeals, that the Indians in this country have, from the earliest period of the Government, occupied public lands at the will of the Government, and that the Indian tribes were subject to be changed from one locality or reservation to another without their consent, as may best serve the purposes and

policy of the Government in the administration of Indian affairs, we would readily admit that the Courts would be bound to recognize the right of the Government to continue that policy. But the facts being otherwise, we contend that the converse of the proposition is equally true.

Ninth. If the Government, as stated by Commissioner Jones, and as established by the decisions of our Courts, both Federal and State, has universally recognized the Indian right of occupancy as sacred, and that such occupancy could not be taken from the Indians except with their voluntary consent, expressed in a written treaty or agreement, this Court must hold that this legislative and administrative precedent is the law of the land, and is binding upon Congress and all the Departments of the Government of the United States.

RIGHT OF INDIAN OCCUPANCY IS AS SACRED AS A FEE-SIMPLE TITLE.

Tenth. Indians occupying lands in this country, under the provisions of treaties or agreements with the United States, cannot be deprived of the use and occupancy of such lands without their consent, except by due process of law; and such lands cannot be taken from them, except in compliance with the provisions under which such lands were acquired. The right of the Indians as to their occupancy is as sacred as that of the United States to the fee.

United States *v.* Cook, 19 Wall. 292–591.
Holden *v.* Joy, 17 Wall. 247.
Wilson *v.* Wall, 6 Wall. 89.
Chinese Exclusion Cases, 130 U. S. 581–611.
Leavenworth, &c., Railroad Co. *v.* United States, 92 U. S. 733.

16 Am. and Eng. Encyc. of Law, second edition, 229 to 233.

Society for Propagation of Gospel *v.* New Haven, 8 Wheat. 484, 493.

Mitchel *v.* United States, 9 Peters, 745–755.

Worcester *v.* The State of Georgia, 6 Peters, 581.

Beecher *v.* Wetherby, 95 U. S. 525–526.

Eleventh. In the case of the United States *v.* Cook, *supra*, this Court stated the law as to the Indian title of occupancy as follows:

"The right of the Indians in the land from which the logs were taken was that of occupancy alone. They had no power of alienation except to the United States. The fee was in the United States, subject only to this right of occupancy. This is the title by which other Indians hold their lands. It was so decided by this Court as early as 1823, in Johnson *v.* McIntosh, 8 Wheaton, 574. The authority of that case has never been doubted. 1 Kent, 257; Worcester *v.* Georgia, 6 Peters, 580. *The right of the Indians as to their occupancy is as sacred as that of the United States to the fee*, but it is only a right of occupancy. Cherokee Nation *v.* Georgia, 5 Peters, 48. The possession, when abandoned by the Indians, attaches itself to the fee without further grant.

"This right of use and occupancy by the Indians is unlimited. They may exercise it within their discretion. If the lands in a state of nature are not in a condition for profitable use, they may be made so. If desired for the purposes of agriculture, they may be cleared of their timber to such an extent as may be reasonable under the circumstances."

Twelfth. In the case of Holden *v.* Joy, *supra*, this Court distinctly held that Congress has no power to interfere with rights under treaties, except in cases purely political. That part of the opinion in that case to which attention is especially called is as follows:

"Suppose that is so, still it is insisted that the President and Senate, in concluding such a treaty, could not lawfully covenant that a patent should issue to convey lands which belonged to the United States without the consent of Congress, which cannot be admitted. United States *v.* Brooks, 10 Howard, 442. Meigs *v.* McClung, 9 Cranch, 11. On the contrary there are many authorities where it is held that a treaty may convey to a grantee a good title to such lands without an act of Congress conferring it, and that Congress has no constitutional power to settle or interfere with rights under treaties, *except in cases purely political.*" Wilson *v.* Wall, 9 Wallace, 89; Insurance Co. *v.* Canter, 1 Peters, 542; Doe *v.* Wilson, 23 Howard, 461; Mitchel *et al. v.* The United States, 9 Peters, 749; United States *v.* Brooks, *et al.*, 10 Howard, 460; The Kansas Indians, 5 Wallace, 737; 2 Story on the Constitution, 1508; Foster *et al. v.* Neilson, 2 Peters, 254; Crews *et al. v.* Burcham, 1 Black. 356; Worcester *v.* Georgia, 6 Peters, 562; Blair *v.* Pathkiller, 2 Yerger, 407; Harris *v.* Barnett, 4 Blackford, 369.

Thirteenth. In the case of Wilson *v.* Wall, *supra*, cited in Holden *v.* Joy, the language of the court is as follows:

"Now, while it is freely conceded that this construction given to the treaty should form a rule for the subsequent conduct of the department, it cannot affect titles given before by the Government, nor does it pretend to do so. Congress has no constitutional power to settle the rights under treaties except in cases purely political. *The construction of them is the peculiar province of the judiciary, when a case shall arise between individuals.* The legislature may prescribe to the executive how any mere administrative act shall be performed, and such was the only aim and purpose of this act."

Fourteenth. In the Chinese Exclusion Cases (130 U. S. 581–611), Mr. Justice Field, announcing the opinion of this Court, said:

"The rights and interests created by a treaty, which have become so vested that its expiration or abrogation will not destroy or impair them, are such as are connected with and lie in property, capable of sale and transfer or other disposition, not such as are personal and untransferable in their character."

And on page 610, this Court used this language:

"The passage cited by counsel from the language of Mr. Justice Washington in Society for the Propagation of the Gospel *v.* New Haven, 8 Wheat. 464, 493, also illustrates this doctrine. There the learned justice observes that 'if real estate be purchased or secured under a treaty, it would be most mischievous to admit that the extinguishment of the treaty extinguished the right to such estate. In truth, it no more affects such rights than the repeal of a municipal law affects rights acquired under it.' *Of this doctrine there can be no question in this Court.*" (8 Wheat. 493.)

Fifteenth. In the case of the Leavenworth, &c., Railroad Company *v.* United States, 92 U. S. 733, *supra*, this Court held as follows:

"Where the right of an Indian tribe to the possession and use of certain lands, *as long as it may choose to occupy the same*, is assured by treaty, a grant of them, absolutely or *cum onere*, by Congress, to aid in building a railroad, violates an express stipulation; and a grant in general terms of 'land' cannot be construed to embrace them."

And on page 755 of 92 U. S. this Court expressly affirms the doctrine laid down in United States *v.* Cook, 19 Wallace, 593, that the Indian right of occupancy was as sacred as that of the United States to the fee. That part of the opinion is as follows:

"And in the recent case of the United States *v.* Cook, where replevin was brought for timber cut and sold by Indians on lands reserved to them, the Court said that the fee of the lands was in the United States, subject only to a right of occupancy in the Indians; that this right of occupancy was as sacred as that of the United States to the fee; but it was 'only a right of occupancy' and 'that the possession when abandoned by the Indians, attaches itself to the fee without further grant.'" 19 Wall. 593.

Sixteenth. In the case of Society for Propagation of the Gospel *v.* New Haven, 8 Wheaton, 493, quoted with approval in the opinion of this Court in the Chinese Exclusion Cases (130 U. S. 581–611), *supra*, the doctrine upon this point was stated by Mr. Justice Washington as follows:

"But there is a still more decisive answer to this objection, which is, that the determination of a treaty cannot divest rights of property already vested under it.

"If real estate be purchased or secured under a treaty, it would be most mischievous to admit that the extinguishment of the treaty extinguished the right to such estate. In truth, it no more affects such rights, than the repeal of a municipal law affects rights acquired under it. If, for example, a statute of descents be repealed, it has never been supposed that rights of property, already vested during its existence, were gone by such repeal. Such a construction would overturn the best established doctrines of law, and sap the very foundation on which property rests."

Seventeenth. In the case of Mitchel *v.* United States (9 Peters, 745), *supra*, this Court gave an exhaustive consideration of the nature and extent of the Indian title to lands in Florida. The following extracts from the opinion of the Court in that case fully support the contention of counsel for Appellants in the case at bar:

"As Florida was for twenty years under the dominion of Great Britain, the laws of that country were in force as the rule by which lands were bought and sold; it will be necessary to examine what they were as applicable to the British Provinces before the acquisition of the Floridas by the treaty of peace in 1763. One uniform rule seems to have prevailed from their first settlement, as appears by their laws: that friendly Indians were protected in the settlement of the lands they occupied, and were considered as owning them by a perpetual right of possession in the tribe or nation inhabiting them, as their common property, from generation to generation, not as the right of individuals located on particular spots.

"Subject to this right of possession, the ultimate fee was in the crown and its grantees, which could be granted by the crown or colonial legislatures while the lands remained in the possession of the Indians, though possession could not be taken without their consent. * * * See cases collected in 2 Johnson's Dig. 15, tit. Indians; and Wharton's Dig. tit. Land, &c., 488. Such, too, was the view taken by this Court, of Indian rights in the case of Johnson *v* McIntosh, 8 Wheaton, 571, 604, which has received universal assent.

"The merits of this case do not make it necessary to enquire whether the Indians within the United States had any other rights of soil or jurisdiction; it is enough to consider it as a settled principle that *their right of occupancy is considered as sacred as the fee simple of the whites.*" (5 Peters, 48.)

Eighteenth. In the case of Worcester *v.* The State of Georgia (6 Peters, 582), this Court in its opinion discussed the whole question of Indian rights and Indian treaties. Mr. Justice McLean, concurring in the opinion of the Court in that case, said:

"The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended mean-

ing than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense. * * * How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction. * * * We have made treaties with them; and are those treaties to be disregarded on our part, because they were entered into with an uncivilized people? Does this lessen the obligation of such treaties? By entering into them, have we not admitted the power of this people to bind themselves and to impose obligations on us. * * *

"Nations differ from each other in condition, and that of the same nation may change by the revolution of time, but the principles of justice are the same. They rest upon a base which will remain beyond the endurance of time.

"After a lapse of more than forty years since treaties have been solemnly ratified by the general Government, it is too late to deny their binding force. Have the numerous treaties which have been formed with them, and the ratification by the President and Senate, been nothing more than idle pageantry?

"By numerous treaties with the Indian tribes we have acquired accessions of territory, of incalculable value to the Union. Except by compact we have not even claimed a right of way through the Indian lands."

Nineteenth. In the same case (Worcester *v.* Georgia, *supra*, pages 559–560), Chief Justice Marshall, delivering the opinion of the Court, referred to the course pursued in reference to Indian tribes on this continent, and said:

"The Indian nations had always been considered as distinct, independent political communities retaining their original natural rights, *as the undisputed possessor of the soil from time immemorial*, with the single exception of that imposed by irresistible power, which excluded them from

intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed, and this was a restriction which those European potentates imposed on themselves, as well as on the Indians."

Twentieth. And referring to the policy which the State of Georgia had pursued, Chief Justice Marshall said (page 560):

"Georgia, herself, has furnished conclusive evidence that her former opinions on this subject concurred with those entertained by her sister States and by the Government of the United States. Various acts of her Legislature have been cited in the argument, including the contract of cession made in the year 1802, all tending to prove her acquiescence in the universal conviction that the Indian nations possessed a full right to the lands they occupied, until that right should be extinguished by the United States, *with their consent.*"

Twenty-first. In the case of Beecher *v.* Wetherby, 95 U. S. 525-526, *supra*, this Court again affirmed the doctrine laid down in United States *v.* Cook, *supra*, as follows:

"In United States *v.* Cook, the United States maintained replevin for timber cut and sold by Indians on land reserved to them, the Court observing that the fee was in the United States, and only a right of occupancy in the Indians; that this was the title by which other Indians held their lands, and that the authority of Johnson *v.* McIntosh on this point had never been doubted. But, added the Court, 'the right of the Indians to their occupancy is as sacred as that of the United States to the fee, but it is only a right of occupancy. The possession when abandoned by the Indians attaches itself to the fee without further grant.'"

THE MEDICINE LODGE TREATY A CONTRACT.

Twenty-Second. An agreement duly executed and confirmed, by which the United States cedes lands, or grants the right to the perpetual use and occupancy of lands, to Indians, in consideration of the relinquishment of the right to use and occupy other lands, is a contract which is binding upon both parties, and which cannot be abrogated or annulled without the consent of both parties.

Appellants rest their case upon this plain, elementary and indisputable legal proposition. They refer the Court to the provisions of the Medicine Lodge Treaty of 1868 (see 15 U. S. Stats., pp. 581–587), a synopsis of which is printed in the record of this case, pages 2, 3 and 4. Counsel for appellees did not cite, in the Court below, an authority or an Act of Congress by which lands thus acquired have been taken from the Indians without their consent, or without condemnation proceedings for rights of way, except the Act of June 6, 1900, the Act in question in this suit, which purported to ratify an agreement, which Congress itself made, but which was never agreed to by the Indians. It is conceded by counsel for appellees that Congress amended the alleged Jerome agreement, and that neither the amendments nor the agreement thus amended were submitted to the Indians for their approval. In the case of Campania Bilbaina *v.* Spanish-American Light and Power Company (146 U. S., p. 497), this Court, in an opinion by Mr. Justice Blatchford, all the other Judges concurring, held as follows: "But if there is any part of it (the contract), in regard to which the minds of the parties have not met, the entire instrument is a nullity as to all its clauses;" citing Eliason *v.* Henshaw, 4 Wheaton, 225; Insurance Company *v.* Young's

Administrator, 23 Wall. 85; Tilley *v.* County of Cook, 103 U. S. 155; Minneapolis and St. Louis Railway *v.* Columbus Rolling Mill, 119 U. S. 149, 151. See also Fire Insurance Ass'n *v.* Mickham, 141 U. S. 564; Crabtree *v.* St. Paul Opera House Co., 39 Fed. Rep. 746; Sibley *v.* Felton, 156 Mass. 273, 276–277; White *v.* Hitchcock, 74 Mich. 208; Kleinhans *v.* Jones, 37 U. S. App. 185; National Bank *v.* Hall, 101 U. S. 50; Eggleston *v.* Wagner, 46 Mich. 620.

In the case of Sibley *v.* Felton, *supra*, the Supreme Judicial Court of Massachusetts held that "failure to agree upon the details or upon a complete plan would render all the preliminary agreements void." The opinion was by Mr. Justice Morton, and all the Judges concurred. Citing Lyman *v.* Robinson, 14 Allen, 242, 252; May *v.* Ward, 134 Mass. 127; Ashcroft *v.* Butterworth, 136 Mass. 511; Freeland *v.* Ritz, 154 Mass. 257; Appleby *v.* Johnson, L. R. 9 C. P. 158; Ridgeway *v.* Wharton, 6 H. L. Cas. 238.

THE MINDS OF CONTRACTING PARTIES MUST AGREE UPON ALL PARTS OF THE CONTRACT.

Twenty-third. Counsel for appellees state in their brief in the court below (page 55) that the Indians ought not to object to the changes which Congress made in the agreement, without consulting them, for the reason that the changes were for the benefit of the Indians, and, "instead of working an injury, were calculated to inure to their advantage and serve to illustrate the purpose and care of Congress to fully protect them."

Counsel for appellants will not enter into a controversy on this subject, although the appellants do not concede this fact, for the reason that it does not matter what may

have been the character of the changes which were made. The law is, that if upon any part of the agreement the minds of the contracting parties have not met, "the entire instrument is a nullity."

Not a Political Question.

Twenty-fourth. The Court of Appeals of the District of Columbia, in its opinion overruling the motion of appellants for a rehearing, said:

"The treaty of 1868 certainly did not vest in the Indians, either in their individual or tribal capacity, anything more than the right to occupy the lands as against the United States until it was found necessary to make other provision for them. There was no grant of estates either of freehold or leasehold; only a mere right to occupy and use the lands, according to the habits and customs of the Indians; but those rights of the Indians were secured to them as against every one, until Congress made provision for assuming control over the lands, and making other disposition thereof, upon such terms and conditions as Congress should prescribe.

"The contention of the complainants in this respect, as stated in the brief of their counsel, is this:

"Indians occupying lands in this country under provisions of treaties with the United States cannot be deprived of the use and occupancy of such lands without their consent except by due process of law; and such lands cannot be taken from them except in compliance with the treaty provisions under which such lands were acquired. The right of the Indians as to their occupancy is as sacred as that of the United States to the fee.

"We hold that it is not a judicial question of due process of law, to be determined by the courts, but that it is a political question for the determination by Congress; and Congress having acted with all the facts before it, including the memorial and protest of the Indians

against the Act of ratification, that Act of ratification is final and conclusive, and the courts have no power or jurisdiction over the subject.

"The case is of a nature that can be taken to the Supreme Court of the United States, and we shall be greatly gratified if that high tribunal may be able to find a way for affording a remedy for what is alleged to be a grievous wrong to the Indians. *Motion for re-argument overruled.*"

Twenty-fifth. The error of the Court of Appeals contained in the foregoing extract from its opinion is the logical sequence of the fundamental error contained in its first opinion, namely, that the Indian tribes, occupying lands in this country, "are subject to be changed from one locality or reservation to another, as may best serve the purposes and policy of the Government in the administration of Indian Affairs," and further, that: "They have no title in the lands they occupy, except in certain cases where treaties of settlement have conferred a title in the land; their right is simply to occupy, at the will of the Government and under its protection."

The exception above mentioned probably refers to lands allotted to Indians in severalty, under the provisions of various treaties, agreements and acts of Congress.

The Court of Appeals having erred in the historical statement, as clearly pointed out in this brief, its legal conclusion is equally erroneous.

Twenty-sixth. The opinion of the Court of Appeals of the District of Columbia in the case at bar, as set forth in the foregoing extract, is so contrary to the universally recognized principles of justice and equity that the Court itself, in announcing its judgment, evidently did so with a feeling of regret; for it concluded with the statement that the case could be taken to the Supreme Court of the

United States, and said: "We shall be greatly gratified if that high tribunal may be able to find a way for affording a remedy for what is alleged to be a grievous wrong to the Indians." Fortunately for Appellants in the case at bar this high tribunal has already found a remedy, for the wrongs inflicted upon Appellants, as will be seen from the authorities heretofore cited, and those to which the attention of the Court will hereafter be called.

SOMETHING WHICH SHOCKS THE CONSCIENCE.

Twenty-seventh. In the case of the New York Indians *v.* United States (170 U. S., page 23), Mr. Justice Brown, in delivering the opinion of the Court, said:

"*There is something, too, which shocks the conscience in the idea that a treaty can be put forth as embodying the terms of an arrangement with a foreign power or an Indian tribe, a material provision of which is unknown to one of the contracting parties, and is kept in the background to be used by the other only when the exigencies of a particular case may demand it. The proviso never appears to have been called to the attention of the tribes, who would naturally assume that the treaty, embodied in the Presidential proclamation, contained all the terms of the arrangement.*"

Twenty-eighth. In the New York case, from the opinion in which the foregoing extract is taken, the fact was disclosed that in making a treaty with the New York Indians, in 1840, the Senate amended it by adding a proviso, to the effect that such of the tribes as did not agree to remove to the country, set apart in Kansas for their new homes, within five years, should forfeit all interest in the lands so set apart to the United States. This proviso was passed by the Senate and thus became a part of the

treaty so far as that body was concerned, and the treaty is so printed in the volume entitled "Revision of Indian Treaties," page 550. But by some mistake, the proviso was not submitted to the Indians for their approval, with the other Senate amendments, and it was not proclaimed by the President as a part of the treaty. However, as the treaty was printed officially, the proviso appeared as a part of the text. The Indians did not occupy the lands within the five years, and the Government regarded them as forfeited and sold them. The Indians presented claims to the United States for the value of these lands. The claims were referred to the Court of Claims, under the Bowman Act for a finding of facts, and afterwards, a special Act was passed authorizing the Court of Claims to hear and determine these claims and to enter up judgment. Either party might appeal to this Court. The Court of Claims decided against the validity of the claims and the Indians appealed. This Court reversed the judgment of the Court of Claims, and remanded the case with instructions to enter a new judgment in favor of the Indians for the net amount actually received by the Government for the Kansas lands.

The extract above quoted from the opinion of this Court in the New York case is exactly in point in the case at bar. Congress amended the so-called Jerome Treaty and did not submit the amendments or the amended agreement to the Indians concerned, for their approval. The Indians objected to the original agreement and withdrew from it; and they were not even permitted to pass upon the amended agreement. As ratified by Congress it was unknown to the other contracting parties. The idea that such an Act can be put forth as embodying the terms of an arrangement with an Indian tribe shocks the conscience of every person who believes in justice and fair dealing.

THE INDIANS HAVE A VESTED RIGHT OF PROPERTY.

Twenty-ninth. The question as to whether the remedy for the taking of the Indian lands in question by the Act of Congress of June 6, 1900, is political or judicial depends upon the fact as to whether the Indians had a vested right of property in such lands.

Thirty. By the treaty of Medicine Lodge (Record, page 3) the land in question was "set apart for the absolute and undisturbed use and occupation of the Kiowa and Comanche tribes of Indians, and for such other friendly tribes or individual Indians as from time to time they (the said tribes) may be willing, with the consent of the United States, to admit among them; and the United States then solemnly agreed by the terms of said treaty that no person, except those therein authorized to do so, and except such officers, agents, and employés of the Government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, should ever be permitted to pass over, settle upon, or reside in the territory described in said treaty." And by Article 12 of the treaty it was provided that no treaty for the cession of any portion or part of said reservation, which was to be held in common, should be of any validity or force as against said Indians, *unless executed and signed by at least three-fourths of all the adult male Indians occupying the same.*

Thirty-one. Counsel for appellants respectfully submit that this treaty creates a vested right of property in the lands mentioned therein. The use of property is property itself, within the meaning of the Constitution. (City of St. Louis *v.* Dorr, 41 S. W. Rep., page 1039.) Reference is also made to the numerous authori-

ties cited heretofore in this brief and wherein this Court frequently held that the right to the use of land was as sacred as the fee itself.

Thirty-two. A vested right is thus defined by Chancellor Kent:

"An estate is vested when there is an immediate right of present enjoyment or a present fixed right of future enjoyment." (4 Kent's Com. 202.)

A right is vested in a person when he has the power to do certain actions or to possess certain things according to the law of the land.

Chase, J., in Calder *v.* Bull, 3 Dall. U. S. 386.

Legislative Acts Impairing Vested Rights are Void.

An Act of the Legislature which seeks to divest or impair vested rights of property is generally held to be unconstitutional and void. (See 6 Am. and Eng. Encyc. of Law, Second Edition, p. 955, and numerous authorities therein cited, from the opinion of this Court in Calder *v.* Bull, *supra*, and opinions of supreme courts in twenty-three States of the Union, embracing eighty-six adjudicated cases, all supporting this proposition), and, we submit, there are no authorities to the contrary.

The Essence of Civil Liberty.

Thirty-three. On this point the special attention of the Court is called to the opinion of Chief Justice Marshall, in the case of Marbury *v.* Madison (1 Cranch 163). This opinion has become a classic in our jurisprudence, and has been cited with approval, perhaps, as often as any other opinion of the Supreme Court of the United States.

Chief Justice Marshall, delivering the opinion of the Court, said:

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury. One of the first duties of government is to afford that protection. In Great Britain the King, himself, is sued in the respectful form of a petition, and he never fails to comply with the judgment of his Court.

"In the 3d Vol. of his Commentaries (p. 23), Blackstone states two cases in which a remedy is afforded by mere operation of law.

"'In all other cases,' he says, 'it is a general and indisputable rule that where there is a legal right there is also a legal remedy by suit or action at law whenever that right is invaded.'"

"And afterwards (p. 109, of the same vol.), he says: 'I am next to consider such injuries as are cognizable by the courts of the common law. And herein I shall for the present only remark that all possible injuries whatsoever that did not fall within the exclusive cognizance of either the ecclesiastical, military or maritime tribunals are for that very reason, within the cognizanc of the common law courts of justice; for it is a settled and invariable principle in the laws of England that every right, when withheld, must have a remedy, and every injury its proper redress.'"

And further the Court held in the Marbury case:

"*The question whether a right has vested or not is, in its nature, judicial,*" *and must be tried by the judicial authority*" (page 167).

INDIAN TITLE A TENANCY FOR LIFE.

Thirty-four. In the case of United States *v.* Cook (19 Wall. 574), this Court, speaking through Chief Justice

Waite, who pronounced the unanimous opinion of the Court, after stating that the fee of Indian lands was in the United Sates, subject only to the right of occupancy, and that "the right of the Indians to their occupancy is as sacred as the United States to the fee;" "that the right of use and occupancy by the Indians is unlimited," and "that they may exercise it at their discretion;" and after further stating the legal questions involved in the case, said:

"These are familiar principles in this country and well settled, as applicable to tenants for life and remainder men. But a tenant for life has all the rights of occupancy in the lands of a remainder man. The Indians have the same rights in the lands of their reservations. What a tenant for life may do upon the lands of a remainder man the Indians may do upon their reservations, but no more."

Thirty-five. According to the opinion of the Court of Appeals in the case at bar, the Indians in this country are merely tenants at will; but according to the unanimous opinion of this Court they are tenants for life. This means life of the tribe, as the lands are not held in severalty; but by the tribe. A tenant at will occupies land at the pleasure of the owner of the fee; but a tenant for life has an estate of free hold. In Perry *v.* Allen, 3 Jur. N. S. 273, the Lord Chancellor said: Title by occupancy is a rightful title—an indefeasible title—just as much as a title by feoffment, fine, or recovery; the occupancy by occupation being *ipso facto* a tenancy *pur autre vie*, and as a freehold *pur autre vie*, is incapable of being defeated by any one." An indefeasible title is "that which cannot be defeated, undone, or made void." (Kinney's Law Dictionary, p. 383.) Such estates—estates for life—"were at common law, given or conferred by the same

feudal rites and solemnities, the same investiture, or livery of seizin, as fees themselves." 2 Black Com. 120; 4 Kent's Com. 24.

PERPETUAL RIGHT OF OCCUPANCY.

Thirty-six. In the case of The Leavenworth, Lawrence, and Galveston R.R. Co. *v.* United States (92 U. S.), this Court, speaking through Mr. Justice Davis, said:

"As long ago as the CHEROKEE NATION *v.* GEORGIA (5 Pet. 1), this Court said that the Indians are acknowledged to have the unquestionable right to the lands they occupy, until it shall be extinguished by a voluntary cession to the Government; and, recently, in United States *v.* Cook (19 Wall. 591), that right was declared to be as sacred as the title of the United States to the fee. Unless the Indians were deprived of the power of alienation, it is easy to see that they could not peaceably enjoy their possessions with a dominant race constantly pressing on their frontier. With the ultimate fee vested in the United States, coupled with the exclusive privilege of buying that right, the Indians were safe against intrusion, if the Government discharged its duty to them. This it has indicated a willingness to do; for in 1834 an act was passed (4 Stat. 729, Sec. 11) prohibiting, under heavy penalties, a settlement on the lands of an Indian tribe, or even an attempt to survey them. This perpetual right of occupancy, with the correlative obligation of the Government to enforce it, negatives the idea that Congress, even in the absence of any positive stipulation to protect the Osages, intended to grant their land to a railroad company, either absolutely or *cum onere*. For all practical purposes, they owned it; as the actual right of possession, the only thing they deemed of value, was secured to them by treaty, until they should elect to surrender it to the United States. In the free exercise of their choice, they might hold it forever; and whatever changed this condition, or interfered with it, violated the guaranties under

which they had lived. The United States has frequently bought the Indian title, to make room for civilized men—the pioneers of the wilderness—but it has never engaged in advance to do so, nor was constraint, in theory at least, placed upon the Indians to bring about their acts of cession."

Thirty-seven. In that case this Court held that the Indians in this country "are acknowledged to have the unquestionable right to the lands they occupy, until it shall be extinguished by voluntary cession to the Government," the doctrine of the sacred character of the title to their land, as laid down in United States *v.* Cook, *supra*, is affirmed, and it is distinctly stated that the Indians in the free exercise of their choice might hold it forever; and whatever changed this condition, or interfered with it, "violated the guaranties under which they had lived." Under this broad and comprehensive doctrine, the contention that Indians, occupying lands in this country, are mere tenants at the will of the Government of the United States, is utterly untenable. On the contrary, as this Court held in the Leavenworth R.R. case, *supra*, the Indians are tenants for life—the life of the tribe—and they thus have an estate of freehold as sacred and indefeasible as an estate in fee simple. This estate cannot be defeated, or taken from them without their consent.

POLITICAL RIGHTS NOT INVOLVED.

Thirty-eight. The case at bar does not involve the political rights of Appellants or of the other Indians in whose behalf this suit is brought. It involves their property rights only. All cases that may be cited by Counsel for Appellees as to the right of Congress to legislate in reference to the political rights of Indians, even

in disregard of treaty provisions, are inapplicable to the case at bar.

Due Process of Law.

Thirty-nine. Appellants cannot be deprived of their right to the use and occupancy of the lands in question without their consent, except by due process of law.

Appellants Have Not Consented to Sell Any of Their Lands.

Forty. By the demurrer in this case Appellees admit all the facts set forth in the Bill of Complaint. It is, therefore, an admitted fact in the case that Appellants have not consented to sell any of their lands to the United States, nor have they consented to the opening of any of their lands to settlement by white people. Their lands have not been taken by due process of law.

Due process of law implies, in all cases, a course of proceeding according to those rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights. It is imperative that there be a court of competent jurisdiction, a hearing, and a fair trial.

10 Am. and Eng. Encyc. of Law, 2d edition, 293, and numerous authorities therein cited.

Definition of Due Process of Law.

Forty-one. The question whether due process of law was accorded, or not, is judicial and not political, and the Courts will always entertain jurisdiction in such a case.

The following may be considered an exhaustive synopsis of the definitions given of due process of law:

"The words 'due process of law' in this place cannot mean less than a prosecution or suit instituted and conducted according to the prescribed forms and solemnities for the ascertaining guilt or determining the title to property. They mean, in each particular case, such an exertion of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as these maxims prescribe for the class of cases to which the one in question belongs. As applied to judicial proceedings, they mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit; and if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the State or his voluntary appearance."

6 Am. and Eng. Encyc. of Law, 43, 1st ed.

PROPERTY CANNOT BE TAKEN WITHOUT JUST COMPENSATION.

Forty-two. The property of Appellants cannot be taken from them for public use without just compensation. And what is just compensation must in all cases be ascertained by a Court or a commission, and a notice and opportunity for hearing must be given to the persons whose property is to be taken.

This proposition is so elementary that it would be a waste of time to submit authorities in its support.

THE CONSTITUTION IS IN FORCE IN OKLOHOMA.

Forty-three. It was provided by section 28 of the act of Congress to organize a temporary government for the

Territory of Oklahoma, approved May 2, 1890, that the Constitution of the United States shall have the same force and effect in said Territory as elsewhere in the United States.

In the case of Downes *v.* Bidwell, one of the Porto Rican cases decided at the last term of this Court, it was held, among other things:

"That where the Constitution has been once formally extended by Congress to Territories, neither Congress nor the Territorial Legislature can enact laws inconsistent therewith."

182 United States Reps., page 271.

The Constitution provides that: "No person shall be" * * * "deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." (Amendments, Article 5.)

AN INDIAN IS A PERSON.

Forty-four. The Appellants are persons within the meaning of the foregoing provision.

In the case of the United States *v.* Crook, 5 Dill. (U. S.) 453, it was held that an Indian is a person within the meaning of the Habeas Corpus Act.

Professor Thayer, in the 1 Harvard Law Rev. 149, discussed the question whether a tribal Indian off his reservation and within a State is protected by the Fourteenth Amendment of the Constitution as being a person entitled to the equal protection of the laws. He says: "What then is there in the character of a tribal Indian to take him out from these clauses of the Constitution? He is a 'person' in the sense of being a human being, and why are we to give to the term on this part of the Constitution

any narrower meaning than that which includes all human beings."

10 Am. and Eng. Encyc. of Law, 440, 1st ed.

PROPERTY RIGHTS INVOLVED.

Forty-five. The right of occupancy of lands is a property right, a right which is as sacred as the fee itself, as all authorities conclusively establish.

The lands in question having been set apart by treaty with the United States, in consideration of the relinquishment by the Indians of the possession of large tracts of land in the State of Kansas and elsewhere, for the absolute and undisturbed use and occupation of the Appellants and the other Indians in whose behalf this suit is brought, and it having been stipulated in the said treaty of Medicine Lodge that no treaty for the session of any portion or part of the reservation should have any validity or force as against the said Indians, unless executed and signed by at least three-fourths of the adult male Indians occupying the same; and said Indians never having executed or signed such a treaty, and never having consented to the cession of any portion or part of their said lands, it follows that the Act of Congress of June 6, 1900, which pretended to ratify an agreement with said Indians, and to open two million acres of their said lands to settlement by white people, and to authorize certain persons to lay out counties and establish towns and sell town lots on said reservation, was enacted in violation of the property rights of said Indians, in violation of the treaty under which said lands were secured, and in violation of the provisions of the Fifth Amendment to the Constitution of the United States; and that said Act of Congress and all Acts amendatory thereof and supplementary thereto, are

null and void, and confer no powers, authority, or duties whatever upon Appellees in this case to carry the provisions thereof into effect.

APPELLANTS PROPERTY NOT TAKEN FOR PUBLIC USE.

Forty-Six. The taking of Appellant's property in the manner set forth in the Bill of Complaint was not, strictly speaking, a taking of private property for public use. It was rather the taking, by legislative decree, of property belonging to Indians and giving it to white men. The justification, which is urged for this legislation is, that the Indians are the wards of the nation, and that Congress may govern them and dispose of their property in any manner that its wisdom may suggest; and that whatever legislation Congress may enact in reference to Indians is political in its nature, and not subject to the jurisdiction of the Courts. If the relation of guardian and ward is to be recognized in our dealings with Indians, that relation does not go to the extent of permitting the guardian to appropriate to himself the ward's property, at his own discretion, or to take the property of the ward and give it to others.

Forty-seven. As heretofore stated in this brief the Medicine Lodge treaty is a contract. Congress having amended, in several important and material provisions, the alleged Jerome treaty after it was signed by the Indians, and neither the amendments nor the treaty as amended, having been submitted to the Indians for their approval, the minds of the contracting parties have never met in approval of said treaty. It was not the agreement of the Indians. The Act of Congress of June 6, 1900, which assumed to ratify an agreement with said Indians, could not give legal effect to a nonentity, or to that

which had no real existence. The said Act of Congress did not pretend to be other than an Act to ratify and confirm "said agreement." It was, therefore, a mere *brutum fulmen*.

Forty-eight. The alleged Jerome treaty is thus eliminated from the case. All that is left of the legislation is that which provides for the opening of the lands of the Indians to settlement by white people, the laying out of counties, townsites, the sale of town lots, and the putting of the mining laws in force, as provided in said Act. These provisions were not a part of the alleged treaty, but were enacted independently of it. This brings us again to the consideration of the question: "Can Congress deprive the Indians of the use and occupation of lands, secured by solemn treaty provisions, without their consent?" The authorities already cited in this brief conclusively answer this question in the negative.

Act Without a Precedent.

Forty-nine. Counsel for Appellants respectfully submit that Congress has never, prior to the passage of the said Act of June 6, 1900, passed an Act which deprived Indians of the right to the use and occupancy of lands secured to them by treaty, without their consent, except by due process of law. No such Act was cited in argument in the Court below by counsel for Appellees. Counsel for Appellants further submit, that no adjudicated case has been cited, which recognizes the right of Congress to deprive Indians of the use and occupancy of lands, thus secured by treaty or agreement, without the consent of the Indians, except by condemnation proceedings for rights of way for railroads. All the cases cited by counsel for Appellees in argument in the Court below

had reference to political rights only, with the exception referred to in paragraph Ninety-eight, *post q. v.*; and in none of them was there the slightest recognition of the newly discovered doctrine that the Indians in this country have no rights which Congress is bound to respect.

Indians Have Rights.

Fifty. The contention of counsel for appellees that Indians, being wards of the nation, Congress may deal with them as the States deal with minors, drunkards, idiots, and insane people, is wholly untenable.

By treating with Indians and by making agreements with them we have admitted their power to bind themselves and to impose obligations on us. As was said by Mr. Justice McLean, in the case of Worcester *v.* The State of Georgia (6 Peters, 581):

"We have made treaties with them; and are those treaties to be disregarded on our part because they were entered into with an uncivilized people? Does this lessen the obligation of such treaties?" Mr. Justice McLean answered his own questions as follows: "After a lapse of more than forty years [now more than one hundred years] since treaties have been solemnly ratified by the General Government, it is too late to deny their binding force." At the time this case was decided, as was stated by Mr. Justice McLean, "except by compact, we have not even claimed a right of way through the Indian lands." Chief Justice Marshall wrote the opinion in that case, and Mr. Justice McLean wrote a separate opinion, concurring therein and giving his reasons at length. A third of a century has elapsed since the Medicine Lodge Treaty was executed. The Indians have observed their part of the treaty, and they now invoke the aid of this Court to

protect their property rights under that solemn compact, from the unconstitutional encroachments of Congress and the Interior Department. The brief and argument of appellees ask, in effect, this honorable Court to regard the Medicine Lodge Treaty as "nothing more than idle pageantry," while appellants insist that it is now too late to deny its binding force. (Worcester *v.* Georgia, *supra.*)

But State laws do not divest minors and persons *non compos mentis* of the title to their real estate. Such laws confer upon the courts authority to hear and determine every case that may arise where the rights of such persons are involved, and if a necessity is found for the sale of their real estate the Court may order the sale of such portion of the estate as it may deem necessary for the support of such minors or incompetent persons. The sale is always the result of a judicial investigation and decree.

An Exception Not in Point.

Fifty-one. Counsel for Appellees state in their brief in the Court below (pages 48 and 49), that:

"The transaction in question here did not deprive the appellants of property or any property right such as is contemplated by said amendment [Fifth Amendment to the Constitution of the United States], but merely changed the form of such property, if property it be, and hence it does not fall within the inhibition of the amendment. But even though such occupancy be property or a property right within the meaning of said amendment, both the spirit and the letter of the amendment have been observed. Due process of law, according to the law of the land, does not in all cases mean a hearing before and a determination by a judicial tribunal. It is not always a judicial question for the courts to determine."

The contention above that the taking of private property by legislative decree does not conflict with the Fifth Amendment, if other property is given in exchange therefor, is wholly untenable. All taking of private property for public use is merely an exchange of property for money. If the contention is well taken, it will nullify all the safeguards of the Constitution for the protection of private property.

Fifty-two. Counsel for appellees contend further in the above extract that due process of law "does not in all cases mean a hearing before and a determination by a judicial tribunal." In support of this contention the case of Murray's Lessees *v.* Hoboken Company (18 Howard, 272) is cited. The attention of the Court to the opinion of the Supreme Court in that case is especially requested.

In that case the Collector of Customs of New York was found to be indebted to the United States for taxes collected by him and not paid over to the amount of $1,374,000, and a distress warrant was issued by the Solicitor of the Treasury, and his property seized and sold to satisfy the debt due the Government.

Fifty-three. There was no previous trial or hearing before a court in that case. The question in that case was whether that proceeding was due process of law within the meaning of our Constitution. The Court held that "these are cases under the law of England after *Magna Charta*, and as it was brought to this country and acted on here, in which process, in its nature final, issues against the body, lands and goods of certain public debtors without any such trial." (18 Howard, 280.) The Court cited the provision of the Constitution authorizing Congress "to lay and collect taxes, duties, imposts and excises," etc., and "to make all laws which may be necessary and proper for carrying into execution those powers."

Fifty-four. In the exercise of these powers the Court held: "Congress passed the Act of 1820, then in question, and provided a summary remedy to compel public officers to pay such balances of the public money as may be in their hands." "The power to collect and disburse revenue," the Court held, "and to make all laws which shall be necessary and proper for carrying that power into effect, includes all known and appropriate means of effectually collecting and disbursing that revenue, unless some such means should be forbidden in some other part of the Constitution." The reason for this exception to the general doctrine as to due process of law, was given by the Court as follows:

"It may be added, that probably there are few governments which do or can permit their claims for public taxes, either on the citizen or the officer employed for their collection or disbursement, to become subjects of judicial controversy, according to the course of the law of the land. Imperative necessity has forced a distinction between such claims and all others, which has sometimes been carried out by summary methods of proceeding, and sometimes by systems of fines and penalties, but always in some way observed and yielded to."

Fifty-five. Thus it appears that the case cited by Counsel for Appellees to sustain their contention, that due process of law "does not in all cases mean a hearing before and a determination by a judicial tribunal," does not apply to the case at bar, but, on the contrary, the Hoboken Company's case clearly shows that there is a distinction between the claims of the Government against public defaulters and all others. Appellants in the case at bar are not public defaulters, and their property has not been seized and sold for the payment of taxes due the Government. "Due process of law," as to "all others" than

defaulters of public revenue, means "a course of proceeding according to those rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights. It is imperative that there be a court of competent jurisdiction; that the proceedings be regular and appropriate to the question involved; and that the trial be a fair one." See 10 Am. and Eng. Encyc. of Law, pages 293 4, where the whole subject is most exhaustively treated.

Has Any Agreement Been Made?

Fifty-six. It is contended by counsel for appellees that the courts have no jurisdiction or authority to consider and determine whether a treaty or Act of Congress has been procured by fraud or duress. (Appellees' brief in the court below, page 18.) This point is conceded, but appellants insist that the courts have the power and authority to consider and determine whether any treaty was ever made, whether any agreement was ever executed, or whether any Act of Congress was ever passed, when property rights are involved. Appellants insist and conclusively show by their bill of complaint that no agreement was ever made by them, such as the alleged agreement which Congress assumed to ratify and confirm by the Act of June 6, 1900. They insist that that Act of Congress is unconstitutional and void, for the reason that it deprives them of two million acres of their lands without their consent, and without due process of law.

Unconstitutionality of Act.

Fifty-seven. But counsel for appellees insist that the unconstitutionality of an Act of Congress is not ground

for injunction against the executive department to prevent its execution. (Appellees' brief in Court below, page 51.) In support of this contention counsel for appellees cite the case of Mississippi *v.* Johnson (4 Wall. 475.) That was an application for an injunction to restrain President Johnson from enforcing the Reconstruction Acts of Congress. The Court held that the granting of an injunction in that case would interfere with the exercise of executive discretion.

But that is not the case at bar. There is no attempt in this case to interfere with executive discretion. The pending application is for an injunction to restrain certain officers of the Government from doing acts which are unlawful, and which acts will inflict irreparable injury upon the appellants in this case. The Act under which appellees assume to act is unconstitutional and void, and confers no authority, powers, or duties upon appellees whatever. An Act of Congress repugnant to the Constitution is not law. (Marbury *v.* Madison, 1 Cranch, 137.)

When Injunction Will Lie.

Fifty-eight. Where adequate compensation cannot be had at law, any person who will sustain injury by acts of an official may have an injunction to prevent such injury, and such officer cannot plead the authority of an unconstitutional law in justification of his acts. An unconstitutional law will be treated by the courts as null and void.

Board of Liquidation *et al. v.* McComb, 92 U. S. 541.

In the McComb case, this Court held as follows:

"But it has been well settled that when a plain official duty, requiring no exercise of discretion, is to be per-

formed, and performance is refused, any person who will sustain personal injury by such refusal may have a mandamus to compel its performance; and when such duty is threatened to be violated by some positive official act, any person who will sustain personal injury thereby, for which adequate compensation cannot be had at law, may have an injunction to prevent it. In such cases the writs of mandamus and injunction are somewhat correlative to each other. In either case if the officer plead the authority of an unconstitutional law for the non-performance or violation of his duty, it will not prevent the issuing of the writ. An unconstitutional law will be treated by the courts as null and void."

Osborn *v.* Bank of the United States, 9 Wheaton, 859; Davis *v.* Grey, 16 Wall. 220.

A Government of Laws, Not of Men.

Fifty-nine. On this point the attention of the Court is again called to the decision of this Court in the case of Marbury *v.* Madison, *supra*. In that case, Chief Justice Marshall, delivering the opinion of the Court, said:

"The Government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy."

The Marbury case was against James Madison, then Secretary of State, and the high character of the office which he held was probably suggested in argument as a reason for immunity from legal process. But the learned jurist asked these pertinent questions:

"Is it on account of the character of the person against whom the complaint is made? Is it to be contended that the heads of departments are not amenable to the laws of their country."

The Chief Justice answered these questions as follows:

"Whatever the practice on particular occasions may be, the theory of this principle will certainly never be maintained. No act of the legislature confers so extraordinary a privilege, nor can it derive countenance from the doctrine of the common law."

The high officials of the Government "for whom the law," said the Court, quoting from Blackstone, "in matters of right, entertains no respect or delicacy," are just as amenable to the jurisdiction and orders of the courts as are the humblest individuals in the land.

What Official Acts are Political and what are Judicial.

Sixty. The line of demarkation between acts of executive officers, which are political or quasi judicial, and therefore not reviewable by the courts, and those acts and duties which are not political or quasi judicial, but which are subjects of judicial cognizance and control, was clearly drawn by Chief Justice Marshall in the Marbury case. The opinion in that case was handed down nearly one hundred years ago, and it has ever since received the unquestioned sanction of all the courts in the land. The acts of executive officers which were purely political or quasi judicial, were pointed out by the Court, and such acts, it was held, could never be examinable by the courts. Those acts which were not political and which were subject to judicial investigation and control, were stated as follows:

"But when the legislature proceeds to impose on that officer other duties, when he is directed peremptorily to perform certain acts, when the rights of individuals are

dependent on the performance of those acts, he is so far the officer of the law, is amenable to the laws for his conduct, and cannot at his discretion sport away the vested rights of others.

"The conclusion from this reasoning is, that where the heads of departments are the political or confidential agents of the executive, merely to execute the will of the president, or rather to act in cases in which the executive possesses a constitutional or legal discretion, nothing can be more perfectly clear than that their acts are only politically examinable. But where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured has a right to resort to the laws of his country for a remedy."

And further the Court held in that case—

"If one of the heads of departments commits any illegal act, under color of his office, by which an individual sustains an injury, it cannot be pretended that his office alone exempts him from being sued in the ordinary mode of proceeding, and being compelled to obey the judgment of the law."

SOME NOTED CASES AGAINST EXECUTIVE OFFICERS.

Sixty-one. In the case of United States *v.* Amos Kendall, Postmaster-General (5 Cranch, C. C. Rep., pages 163 to 277), the United States Circuit Court of the District of Columbia issued a mandamus to compel the Postmaster-General to perform a ministerial act. This case was taken to the Supreme Court of the United States by writ of error and affirmed. (See 12 Peters, page 524.) This Court has on several occasions passed on this subject. (See 14 Peters, 497, 599.)

Sixty-two. A noted case, in which the Kendall case was followed and approved, is that of the United States *v.*

Carl Schurz, Secretary of the Interior (102 U. S. 378.) In that case a mandamus was asked to compel the Secretary to deliver a patent, which had been signed, sealed, countersigned, and duly recorded. The Supreme Court of the District of Columbia refused the writ, but on writ of error this Court reversed the judgment of the court below, and the case was remanded with instructions to issue the writ. (102 U. S., page 405.)

Sixty-three. In the case of Union River Logging Railroad *v.* Noble, Secretary of the Interior, *et al.*, the Supreme Court of the District of Columbia issued an injunction against the Secretary of the Interior and the Commissioner of the General Land Office, restraining them from executing a certain order which had been made by the predecessor of the Secretary. The case was appealed by Defendants to this Court, and the judgment of the Supreme Court of the District of Columbia was affirmed. (147 U. S. pp. 165–177.) This opinion was handed down in 1893, and was written by Mr. Justice Brown, all the Judges concurring. The opinion reviews all the adjudicated cases, including Marbury *v.* Madison, which is denominated "the great case," and Kendall *v.* Stokes, 12 Pet. 524, which is sometimes cited as the United States *v.* Kendall (see page 171), and held:

"We have no doubt the principle of these decisions applies to a case wherein it is contended that the Act of the head of a Department, under any view that could be taken of the facts that were laid before him, was *ultra vires*, and beyond the scope of his authority. If he has no power at all to do the act complained of, he is as much subject to an injunction as he would be to a mandamus if he refused to do an act which the law plainly required him to do."

The Court then quoted with approval the extract here-

tofore quoted from the opinion of this Court in the case of Board of Liquidation *v.* McComb, *supra*.

Sixty-four. In the case of Hoover *v.* McChesney (81 Fed. 472–485), the United States Circuit Court for Kentucky granted an injunction to restrain the postmaster at Lexington, Kentucky, from detaining, seizing, or tampering with mail matter addressed to the plaintiff. The postmaster was acting under orders from the Postmaster-General of the United States. The court held that the Postmaster-General's order was invalid and beyond his constitutional authority.

Sixty-five. In the case of Hoke Smith *v.* Reynolds (9 App. D. C. 216), the Court of Appeals of the District of Columbia held that—

"An injunction will lie to restrain the Secretary of the Interior and officers of the Land Department from attempting to exercise jurisdiction over land as a part of the public domain by directing a survey thereof or otherwise, where such land has been separated from the public domain by an act of Congress."

The opinion in that case was pronounced by Chief Justice Alvey. It reviewed the authorities and held that the proposed action on the part of the Land Department was purely *ultra vires*. "In such a case," this opinion stated, "it has been repeatedly held that an injunction may issue."

The case was appealed to this Court and the judgment reversed, on the authority of the decision in Warner Valley Stock Co. *v.* Smith (165 U. S. 31), which was to the effect that the suit abated on the resignation of the officer against whom the proceedings were instituted. There was no expression of opinion on the merits.

Sixty-six. In the case of Kirwan *v.* Murphy, in the

Circuit Court of Appeals, 8th Circuit, 49 U. S. App. 658, it was held that injunction would lie to enjoin officers of the several departments of the Government from the performance of ministerial acts under a wrong construction of law.

See also the following cases:

Dinsmore *v.* Southern Express Co., 92 Fed. Rep. 714, and cases therein cited.

Webster *v.* Douglas Co., 102 Wisc. 181; 71 N. W. 885.

The Minneapolis Brewing Co. *v.* McGillivay, 104 Fed. Rep. 258.

AN UNBROKEN LINE OF AUTHORITIES.

Sixty-seven. It will thus be seen by an unbroken line of authorities covering nearly one hundred years of our federal jurisprudence, it has been conclusively established that the heads of departments in Washington and other public officials may be compelled by mandamus to perform purely ministerial acts, and prevented by injunction from the performance of acts which are *ultra vires*, or which they have no lawful authority to perform.

THE MAKING OF TREATIES WITH INDIANS DISCONTINUED.

Sixty-eight. It is true, as stated in Appellee's brief in the court below, page 5, that in 1871 Congress determined to discontinue the policy of making treaties with Indians. (See Section 2079 of the Revised Statutes of the United States.) But it was expressly provided in that section that no obligation of any treaty lawfully made with an Indian tribe prior to March 3, 1871, should be invalidated or impaired thereby. And by Section 2116 of the Re-

vised Statutes, it was provided that no purchase, grant, or other conveyance of lands from any Indian nation or tribe of Indians should be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution. Since 1871, instead of executing treaties, which were made by the President and ratified by the Senate, as are treaties with foreign nations, agreements have been ratified and confirmed by acts of Congress. That is the only difference in the two methods of the Government. An agreement approved by the Indians and ratified by Congress has taken the place of a treaty which was made by the President and ratified by a two-thirds vote of the Senate.

The effect is precisely the same. The difference is only in the manner of ratification by the United States.

Indians May Sue in the Courts.

Sixty-nine. The right of Appellants to bring and maintain this suit in the courts has been questioned, by reason of the fact that they are Indians. And the further question has been raised as to whether they must sue as individuals or as a tribe, in the name of the tribe. Upon these questions, Appellants submit the following propositions:

Seventy. The law assumes that Indians may sue in the courts of the United States.

Section 2126 of the Revised Statutes of the United States is as follows:

"In all trials about the right to property in which an Indian may be a party on one side and a white person on the other, the burden of proof shall rest upon the white person whenever the Indian shall make out a presumption of title in himself from the fact of previous possession or ownership.

Seventy-one. An Indian tribe, not being a body politic or having a corporate name, cannot sue in the name of the tribe. But one or more members of the tribe, in behalf of themselves and the other Indians interested, may file a bill to protect their rights.

Strong *v.* Waterman, 11 Paige (N. Y.) Chancery Reports, 607.

16 Am. and Eng. Encyc. of Law, second edition, and numerous authorities therein cited.

Blue Jacket *v.* Commissioners of Johnson County (Kansas Indians), 5 Wall., 737.

Seneca Nation *v.* Christy, 162 U. S. 288–9.

The case of Strong *v.* Waterman, *supra*, is a conclusive authority on this point. The opinion was by Chancellor Walworth.

The following quotation from the statement of that case will show that the facts were similar to those in the case at bar.

"The bill was filed by the complainants, who were two chiefs of the Seneca nation of Indians, and who had been appointed by the general council of chiefs for that purpose, in behalf of themselves and the other individuals of the Seneca nation, residing on their several reservations. And the bill, after setting forth the original title of the Seneca nation of Indians to the lands of the reservations, not only by occupancy but also by the recognition of their rights by the State, alleged that the said nation of Indians and the people thereof residing on their reservations, had, under the law of the State of New York and the treaties with the United States, the sole and exclusive right to the possession, use, and occupancy of their reservations, until they should be voluntarily surrendered up or relinquished by the nation, in the manner provided by law. * * * Various other facts were stated in the bill, showing the necessity of the interference of the court of chancery, to

ascertain and settle the rights of the Indians to the lands claimed and possessed by the defendant, and to prevent the occupation of other portions of the reservation by him and the cutting of the wood and timber thereon. And the complainants prayed * * * that the defendant and his servants, agents, and workmen might be perpetually restrained by the injunction and decree of the court from entering upon, using, or in any manner interfering with, settling upon, or controlling the possession of any portion of the Cattaraugus reservation, or any improvements or fields thereon; and from cutting wood, timber, or saw logs on the premises, or carrying the same away, or committing waste, &c., and from hindering, molesting, or disturbing the Indians or individuals of the nation, in the possession of any of the lands of the reservation. And that the complainants, for themselves, and in behalf of the Seneca nation of Indians, might have such further or other relief in the premises as might be agreeable to equity."

Seventy-two. The following extracts from the opinion of the Court in that case are applicable to the case at bar:

"For the right to the possession is in several thousand individuals, in their collective capacity, which individuals, as a body, have no corporate name by which they can institute an ejectment suit. * * * The right of the Indians to the undisturbed possession and enjoyment of their lands being established, by the humane principles and policy of the State, if the common law furnishes no sufficient remedy for the protection of those rights, it is a part of the acknowledged jurisdiction of this Court to interpose for their relief. And I think, upon the case made by the complainant's bill, that this Court is bound to decree an account for the injury which the Indians have sustained by the trespasses upon their lands which have already taken place, and also to protect them by injunction, against the further threatened injuries from the defendant and those in his employ.

"The laws of this State do not recognize the different

tribes of Indians, within our bounds, as independent nations, but as citizens merely, owing allegiance to the State government, subject to its laws, and entitled to its protection as such citizens. (Jackson *v.* Goodell, 20 John. Rep. 188.) The Indians cannot, therefore, institute a suit in the name of the tribe; but they must sue in the same manner as other citizens would be required or authorized to sue, for the protection of similar rights. And as the individuals composing the Seneca nation of Indians, and residing on, and entitled to, their several reservations, are too numerous to join in this suit by name, the bill is properly filed by these complainants in behalf of themselves and the residue of the nation residing upon their reservations. The bill also shows that the two persons named as complainants have been duly authorized by the council of chiefs, who have the right to direct in all matters relating to the general interests and business of the nation. The parties are, therefore, properly before the court, and the complainants are entitled to retain this preliminary injunction."

Seventy-three. Appellants were authorized by a general council of the tribes held in the month of June, 1901, to institute any suit they might deem necessary for the purpose of preventing the wrongs and injuries against said Indians as set forth in their Bill of Complaint. (Record, pp. 20–1.) And in the 12th article of the Medicine Lodge treaty, by which treaty their right to the use and occupancy of these lands was secured, said Indians were treated, not as a body politic, but as individuals, who could alienate their lands only by a treaty "executed and signed by at least three-fourths of all the adult male Indians occupying the same." (Record, p. 4.) And said lands were "set apart for the absolute and undisturbed use and occupation of the Kiowa and Comanche tribes of Indians, and for such other friendly tribes or individual Indians as from time to time they (the said tribes) may be willing, with

the consent of the United States, to admit among them." (Record, p. 3.)

Seventy-four. In the Blue Jacket case, *supra*, the chief of the Shawnee tribe of Indians residing in Kansas, brought the suit as well for himself as all other members of the Shawnee tribe, and his right to sue in that manner was recognized and sustained by this Court in the case reported in 5th Wallace, 737. There were several other cases of like character reported in same volume, including the case of the New York Indians, in all of which the suits were brought as in the case at bar.

In the case of Seneca Nation *v.* Christie (162 U. S. 288–9), *supra*, the Strong *v.* Waterman case, *supra*, is cited and quoted with approval.

Upon this point Counsel for Appellants submit with perfect confidence that there are no adjudicated cases in this country in conflict with the doctrine laid down in the Strong *v.* Waterman case and the other cases above cited.

The Law of Estoppel.

Seventy-five. Counsel for Appellees state in their brief in the Court below (page 56), that Appellants have assented to the amended agreement by accepting its benefits, and are thereby estopped from saying it did not receive their approval. In previous pages of their elaborate brief and argument, counsel for Appellees have sought to show that Indians are the wards of the nation; that their condition is that of minors, lunatics, or persons *non compos mentis*, and that the Government occupies towards them the relation of *parens patriæ*. But, in this last contention, counsel for Appellees seek to bind them by the law of *estoppel in pais*, a legal consequence of one's acts which could only be imposed on those who are fully competent to manage their own affairs.

Seventy-six. But the facts do not support this last contention of Appellees. By reference to the Record, in this case (pages 23 and 24), there will be found the petition of the Appellants, other than Lone Wolf, to be made parties plaintiff in this suit, in which they state that they have never accepted allotments of their lands to the extent of approving said allotments. Other statements equally as important on this subject will be found in the Record, at the place indicated. But the Appellants are not especially opposing the allotment of a portion of their lands. They are contesting the confiscation of two million acres of their lands by legislative decree and the opening of those lands to settlement by white people. They seek, principally, to enjoin the Secretary of the Interior and all other officials of the Government from opening their lands to settlement by white people without their consent and in violation of property rights, secured to them by the solemn provisions of a treaty, which is the supreme law of the land. They seek to enjoin the Secretary and the other appellees from the performance of any acts in furtherance of this attempt to deprive them of their lands, from the surveying of them to the granting of patents to them to persons not members of their tribes.

Mr. Justice Bradley's Opinion.

Seventy-seven. This argument would be incomplete without special reference being made to the opinion in this case of Mr. Justice Bradley, of the Supreme Court of the District of Columbia, now deceased. That opinion is printed in the Record, pages 26 to 34. We will briefly refer to the most important of the cases cited in his opinion:

Seventy-eight. The case of Georgetown *v.* Alexandria Canal Co. *et al.* (12 Pet. 91), cited by Mr. Justice Brad-

ley to show that Appellants could not maintain this suit, is inapplicable. That case turned upon the question as to the right of private persons to abate a public nuisance. The Court, in the Georgetown case, held that such right did not exist, unless the Complainants alleged and proved special injury to them not suffered by the entire community. A public nuisance is a criminal offence, and the public prosecutor should abate it, unless private citizens suffer special injury. That was all that was determined in said case. It cannot be regarded as in any respect applicable to the case at bar.

The Indian tribes are not incorporated, have no corporate name and they are not a body politic. They can only sue in the manner adopted in this suit. This is fully established by the authority of the case of Strong *v.* Waterman, *supra*, and the other cases cited.

Seventy-nine. He quoted with approval the following from Denio, J., in People *v.* Smith, 21 N. Y. 595. "In imposing a tax or in appropriating the property of a citizen, or a class of citizens, for a public purpose, with a proper provision for compensation, the legislative act is itself due process of law."

In the case at bar the lands of the Indians were not taken on account of failure to pay a tax, or under the power of eminent domain. There is no pretence of that kind, and there was no "proper provision for compensation." In a "proper provision for compensation," "a hearing, or an opportunity to be heard, is absolutely essential." (Earl, J., in Stuart *v.* Palmer, 74 N. Y. 191, quoted by the Court below with approval (Record, p. 29). Both of the New York cases cited above sustain the contention of Appellants in this case.

Eighty. Mr. Justice Bradley (Record, p. 29) said:

"The proceeding adopted in this case is the ordinary course followed in many like cases where Indians of other tribes have agreed to accept lands in severalty, with compensation for lands taken by the Government and thrown open for settlement. It is the usual process. The method was first negotiation; then an agreement specifying terms subject to ratification by Congress; then full opportunity to be heard in Committees of Congress, and finally a legislative act providing for compensation."

With due respect, counsel for Appellants submit that the proceeding adopted in this case is not the ordinary course followed in like cases. It is not the usual process, unless the Court holds that the Indians have agreed to relinquish their rights to the lands in question, and are bound by the provisions of the so-called Jerome treaty. In all other cases, in dealing with the Indians in respect to the use and occupation of their lands, the Indians have agreed to relinquish their surplus lands, at a price fixed in the agreement, before any attempt has been made to deprive the Indians thereof. This is expressly provided for in the general allotment law. Section 5 of said law, entitled "an Act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians and for other purposes," provides as follows:

"*And provided further*, That at any time after lands have been allotted to all the Indians of any tribe, as herein provided, or sooner, if in the opinion of the President it shall be for the best interest of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, *in conformity with the statute or treaty under which such reservation is held*, of such portions of its reservation not allotted as such tribe shall, from time to

time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release shall also be prescribed by Congress."

Eighty-one. The foregoing provision is a part of the "Land in Severalty Act," which was approved February 8, 1887, and it shows what the usual process is and what it has been ever since Congress adopted the policy of allotting to Indians their lands in severalty, and of purchasing their surplus lands to be opened to settlement by white people. This process has not been observed or followed in the case at bar. There has been no release of said lands by said tribes "*in conformity with the statute or treaty under which such reservation is held*," and the Indians have never consented to sell or relinquish the same.

Eighty-two. Mr. Justice Bradley held that the consent of the Indians in this case was not necessary. The following extract from his opinion (Record, p. 30) illustrates fully the position of the presiding justice:

"It is urged that inasmuch as the act of June 6, 1900, amended the agreement, and that such amendments were not submitted to the Indians and concurred in by them, there has not been such meeting of the minds of the contracting parties as to make a valid contract. If the validity of the legislation depended upon the concurrence of the Indians in its various provisions, the objection would have great force; but manifestly the existence of such a necessity would be an almost insuperable obstacle to all legislation in which their rights are concerned; it would be inconsistent with the relation that they occupy to the Government, and in direct conflict with that sovereignty that the United States of necessity, of right, and in fact

exercises over them. They are not independent nations. They are dependent 'wards' of this nation 'in a state of pupilage,' subject to the control of Congress."

Eighty-three. In support of this doctrine Mr. Justice Bradley quoted from Mr. Justice Miller, in the case of U. S. *v.* Kagama (118 U. S. 375). But in that case the only question involved was as to the power of Congress to subject the Indians to laws which provided that offences committed by one Indian against another should be tried in United States Courts, instead of tribal Courts. That was the only question involved, and it was the power of Congress to so provide, which was sustained in that case.

Eighty-four. So in the case of Cherokee Tobacco (11 Wall. 616). It was held in that case that the internal revenue laws applied to the Cherokee nation. The internal revenue laws did conflict with the treaty with the Cherokee nation. But the conflict had reference only to political questions. It did not involve the power of Congress to deprive the Indians of their land. The quotation, in his opinion, from the case of Foster *v.* Neilson (2 Pet. 314), had reference to political rights only. It is true that "a treaty may supersede a prior act of Congress and an act of Congress may supersede a treaty." But an act of Congress, under which property rights have been secured, cannot divest those rights by a repeal of the prior act. And so of rights secured by a treaty. They stand precisely upon the same plane as rights secured by acts of Congress. The distinction between political and property rights is well defined, and there is no conflict in the authorities on the subject. The failure to observe this distinction accounts for the error into which the Courts below have fallen.

Eighty-five. The case of the Cherokee Nation *v.* Kansas

Rwy. Co. (135 U. S. 641), was cited by Mr. Justice Bradley. In that case the Court held that Congress had the power to exercise the right of eminent domain in the Cherokee nation. But Mr. Justice Bradley failed to point out the fact that in that case there was the most ample provision made by the Act of Congress for ascertaining the value of the improvements upon the lands taken for the right of way and for payment to the nation for the value of the land itself; and in both respects a judicial hearing was provided for as in condemnation proceedings generally. That case is in no respects similar to the case at bar.

Eighty-six. The Old Settler's case (148 U. S. 427) was also cited by Mr. Justice Bradley. In that case this Court stated that—

"The Court of Claims declined to go behind this treaty on the ground that it was not within the province of a Court, either of law or equity, to determine that a treaty or an act of Congress had been procured by duress or fraud, or to declare it inoperative for that reason, and that it was not the purpose of the act to confer upon that Court extra judicial powers."

Eighty-seven. The treaty in that case was executed in 1846. Fifty-four years had elapsed before the courts were asked to set the treaty aside upon the ground that it had been procured by duress and fraud. Quite different is the case with the alleged Jerome treaty. The Indians began their repudiation of the treaty as soon as it was signed, and continued to protest against it from 1892 until October, 1899, eight months before Congress pretended to ratify it, when they in general council of substantially all the adult male members repudiated it and petitioned Congress to cast it out and not accept it

as their free act and deed. But this is not the whole truth. In assuming to ratify the alleged Jerome treaty Congress amended it in several material respects, and did not submit the amendments or the amended treaty to the Indians for their approval. Hence the minds of the contracting parties never met and no agreement was ever made. There is a marked difference between determining whether a treaty or an act of Congress was procured by duress and fraud; or whether any treaty or act whatever was executed or enacted. The courts will always ascertain, where property rights are involved, and an act of legislation is called in question, whether the act were really passed or not, as required by the Constitution of the State or the Nation.

Eighty-eight. The last case cited by Mr. Justice Bradley is that of The United States *v.* Choctaw Nation *et. al.* (179 U. S. 494; Record, p. 33.) In that case it was alleged that the compensation to be paid the Indians by the terms of the treaty of 1866 was inadequate, and that the Indians evidently did not understand its provisions when they executed it. But this Court, in a very able opinion by Mr. Justice Harlan, held that the Court could not give the treaty a construction inconsistent with the clear import of the words of the treaty itself. Notwithstanding the alleged inadequacy of compensation for the lands which were ceded to the United States by the treaty, this Court decided that the Indians were held and firmly bound by its provisions. The Indians admitted that they had made and executed it, and this Court very properly held that it was binding upon them. "It is a poor rule that won't work both ways." If the Choctaw treaty of 1866 was binding upon the Indians, why is not the Medicine Lodge treaty of 1868 binding upon the United States? This question is answered in the case of Worcester *v.* the State

of Georgia (6 Pet. 581), to which reference has already been made. In that case Mr. Justice McLean, concurring with the opinion of the Court, said:

"We have made treaties with them, and are those treaties to be disregarded on our part, because they were entered into with an uncivilized people? Does this lessen the obligation of such treaties? By entering into them, have we not admitted the power of this people to bind themselves and to impose obligations on us? * * * Nations may differ from each other in condition, and that of the same nation may change by the revolution of time, but the principles of justice are the same. They rest upon a base which will remain beyond the endurance of time."

APPELLEES' AUTHORITIES.

Eighty-nine. In the brief of Appellees filed in the Supreme Court of the District of Columbia, to which reference has heretofore been made, numerous authorities were cited to sustain their contentions. Some of the cases cited have heretofore been mentioned, and their inapplicability to the case at bar has already been pointed out. Lest our silence should be misconstrued, other cases cited in Appellees' brief will be referred to, and their utter failure to sustain Appellees' contentions will be pointed out.

Ninety. The Kagama case (118 U. S. 375) has already been mentioned. The quotation from the opinion of this Court in that case, printed in Appellees' brief, page 9, not only does not sustain Appellees' contentions, but it fully sustains the contentions of Appellants. This Court, in that case, referring to the Indians in this country, said:

"From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government

with them, and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and *by this Court, whenever the question has arisen.*"

In the case at bar, Appellants now confidently ask that this Honorable Court will interfere in their behalf and protect them from the confiscation of their lands, the permanent occupancy of which was solemnly promised them in the Medicine Lodge Treaty of 1868. Heretofore similar protection has always been afforded by this Court; "whenever the question has arisen."

Ninety-one. On page 11 of Appellees' brief, is a quotation from a message of the late President McKinley, which fully illustrates his own kindly disposition and keen sense of justice. He said the Indians were the wards of the Nation, but that "they should, nevertheless, be dealt with in a manner calculated to give them confidence in the Government and to assist them in passing through the inevitable transition to a state of civilization and full citizenship." Will the taking of two million acres of the lands of Appellants, the perpetual occupancy of which has been solemnly promised by the Government, be calculated to give the Indians "confidence in the Government?" This Court must answer that question. In the opinion of counsel for Appellants nothing could inspire the confidence of the Indians so much as a full recognition by this Court of the absolute right of Appellants in this case to the occupancy of their lands, until voluntarily relinquished by them, and a decree of this Court securing to them this right.

Ninety-two. In Appellee's brief, pages 12 and 13, is a quotation from the opinion of this Court in the case of the *Amiable Isabella* (6 Wheat. 1, 71, 72) in which it is

stated that the treaty-making power is political and belongs to Congress and the Executive and not to the Courts. This is conceded. The power to make, alter or amend by inserting any clause, whether small or great, important or trivial, belongs exclusively to Congress and the Executive. But the power to construe and enforce treaties is distinctly recognized as judicial, as stated in that opinion; and "*this Court*," it was held, "*is bound to give effect to the stipulations of the treaty in the manner and to the extent which the parties have declared, and not otherwise.*" In this opinion it is distinctly and forcibly stated that the construing and enforcement of treaties is a judicial question, and that it is the duty of the courts "to give effect to the stipulations of the treaty." The sole object of the institution of the case at bar and in bringing it to this Court on appeal is to secure a judicial decree giving effect to the stipulations of the treaty of 1868. Congress and the Executive Department of the Government have utterly disregarded those stipulations. The Appellants have never made any treaty since that of Medicine Lodge in 1868. Congress attempted to make an agreement for them by the Act of June 6, 1900. But there were no contracting parties. The Indians never agreed to the Act, nor were they asked to agree to it. Congress alone participated in making the so-called agreement.

The opinion of this Court in the case of the *Amiable Isabella*, *supra*, fully sustains every contention of Appellants in the case at bar, and completely overwhelms the contentions of Appellees.

Ninety-three. The case of Doe *v.* Braden (16 How. 635) is cited by Appellees (brief, page 14) in order to make it appear that the question of enforcing a treaty is political and not judicial. But the case does not support the contention of Appellees. The question which this Court

declared to be political, in that case, was whether the treaty-making power in Spain was lodged in the King or in the Cortez. This Court very properly refused to open that question. It was one solely for the political departments of the Governments to determine. That case is inapplicable to the case at bar.

Ninety-four. Counsel for Appellees in their brief (page 17) cite the case of Fellows *v.* Blacksmith (19 How. 366). But that case is inapplicable to the case at bar. In that case an objection was taken in the argument to the validity of the treaty on the ground that one of the bands of Indians who executed it was not represented by the Chiefs and headmen of the bands in the negotiations and execution of it. This Court answered that objection by stating that the treaty, after being executed and ratified by the proper authorities of the Government, became the Supreme law of the land, "and the courts can no more go behind it for the purpose of annulling its effect than they can go behind an Act of Congress." That case was an action of trespass, *quare clausum fregit*, brought by one John Blacksmith, a Seneca Indian, against Fellows and Kendle, for entering with force into the close of the plaintiff. Defendants claimed title under an Indian treaty.

There were two treaties executed by and between the United States and the Indians, who consisted of nine bands or tribes, one of whom was the Tonawanda band. The two treaties were executed in 1838 and 1842, respectively. The trespass suit was decided by this Court in 1856, which was fourteen years after the execution of the treaty of 1842. It is not stated in the report or opinion of the case to which of the treaties the objection in argument was made. The opinion of the Court gives a synopsis of the evidence submitted on the trial of the case in

the lower court, but no reference is made to any evidence in reference to the failure of the chiefs and headmen of one of the bands to execute the treaty. Hence the objection taken in the argument must have appeared, if at all, on the face of the papers. The question raised in argument, which the Court decided in that case, was to the effect that it was for the United States to determine the authority of the Indians who may execute a treaty with the Government. There were nine tribes who participated in the formation of the treaties involved in that case. There was no question raised by any of the tribes as to the proper execution of the treaty. After the last executed of the two treaties involved had been in existence fourteen years without challenge by any one as to their validity, and without any objection to it ever having been raised by the Indian tribe which, it was alleged, did not properly execute it, this Court very properly held that the Defendants in that trespass case could not take advantage of such an objection. The treaty had been executed by the Indians, whom the Government recognized as competent to enter into the negotiations, and it had been acquiesced in, and was then acquiesced in by all the Indians concerned. There is no similarity in that case to the case at bar.

Congress alone made the so-called agreement, which is set forth in the act of Congress, of June 6, 1900. The agreement as amended was not submitted to the Indians for their approval. They never have approved it, and it is unreasonable to contend that they are bound by its provisions. It may be added, that this Court, in the case of Blacksmith *v.* Fellowes, gave effect to the treaty as executed, and recognized the right of the plaintiff, who was an Indian, to sue in the courts, and fully sustained his property rights under the treaties of 1838 and 1842.

Ninety-five. Counsel for Appellees, in their brief, page 23, state that Appellants' contentions that they have not ceded the land in question, may be dismissed with the statement that the decision of the political branch of the Government that their lands have been properly ceded is conclusive. This contention, if conceded, would deny to the courts the right to construe treaties and Acts of Congress, and would invest the heads of the departments with absolute power. On the contrary, as was held in the case of the *Amiable Isabella, supra*, it is the province of the courts to construe treaties, to find out the intention of the parties to them; and "this Court is bound to give effect to the stipulations of the treaty in the manner and to the extent which the parties have declared, and not otherwise."

Ninety-six. Counsel for Appellees, in their brief, pages 23 and 24, place great stress upon the assertion that, "An Act of Congress may supersede a treaty." It is conceded that Congress may abrogate treaties and repeal prior acts. But it has never been seriously contended that such abrogation or repeal affected the validity of titles acquired under the treaties or laws while they were in force. The United States recently concluded a treaty with Spain by which Porto Rico and the Philippine Islands were ceded to the United States. Suppose Spain or the United States should abrogate that treaty, would that invalidate the cession of those Islands to the United States? Or, suppose Congress should repeal the homestead laws of the United States, would such repeal in any manner, or to any extent impair the titles to the millions of acres of land acquired for homesteads while those laws were in force? Unless these questions can be answered in the affirmative, the contention of counsel for Appellees proves too much. But as applied to the case at bar, it requires an affirma-

tive answer to support the contention of counsel for Appellees, that an Act of Congress may supersede, a prior treaty, and invalidate property rights acquired under it.

Ninety-seven. The case of Ward *v.* Race Horse (163 U. S. 504) was cited by counsel for Appellees (Brief, page 25), in order to support the doctrine contended for in the previous paragraph. But that case involved only the right to hunt game upon unoccupied public lands, which was a mere privilege, which carried with it no right whatever to the land. And in the case of Thomas *v.* Gay (169 U. S. 264) cited on page 25 of Appellees' brief, the question involved was purely political. The exemption from taxation and the inclusion of land within the limits of any State or Territory involve questions of public policy and not property rights.

Ninety-eight. Counsel for Appellees in their brief (pages 26, 27, and 28), refer to the recent Acts of Congress in reference to the Five Civilized Tribes and attach special importance to the Act of Congress of June 28, 1898, known as the Curtis Act. In Appellees' brief (page 27) there is the following statement:

"The act of 1898 provided that upon completion of the rolls of any tribe a commission should proceed to allot the exclusive use and occupancy of all the lands of such tribe among the citizens thereof, such allotments to be confirmed by the Secretary of the Interior; that the minerals in their lands should be leased by the Secretary of the Interior, who was given authority to fix the rate of all royalties to be paid by lessees; that town sites should be surveyed, laid out and platted and the lots therein appraised and sold under the supervision of the Secretary of the Interior."

In the foregoing extract reference is made to sections 11, 13, and 15 of the Act of Congress of June 28, 1898 (30 U. S. Stats., pp. 497–498–500).

Counsel for Appellees certainly did not intend in making the foregoing statement to mislead the Court. But the statement is incomplete and misleading. The phrase, "that the Commission (meaning the Dawes Commission) should proceed to allot the exclusive use and occupancy of all the lands of such tribe among the citizens thereof" is not correctly quoted. The language of the Act (section 11, page 497 of said Statutes) is as follows: "Shall proceed to allot the exclusive use and occupany *of the surface* of all the lands of said Nation or tribe." The title to the land still remained in the tribe, and the citizen of the tribe got no better title than he had before. The Act was an effort on the part of Congress to prevent the monopoly of the land by a few persons and to equalize the land-holdings so as to give every citizen an equal share in the use of the lands of the tribe. The title to the land was not affected. The section in reference to leasing tribal lands (section 13, page 498) is vague and uncertain in its meaning. And there is a suit now pending in this Court, the Cherokee Nation *v.* Ethan A. Hitchcock, No. 340, which involves the construction and constitutionality of that section.

The town-site reference in the foregoing extract is incomplete and misleading. By reference to section 15 of said Act (pages 500-501) it will be seen that no titles passed to the purchasers of town lots; that the purchase-money was to be deposited in the U. S. subtreasury at St. Louis, and "such deposit shall be deemed a tender to the tribe of the purchase-money for such lot." Deeds could only be obtained from "the person authorized by the tribe." Unless the tribe should authorize some person to execute deeds to the lots no title would pass to the purchaser. This was a distinct recognition by Congress of the doctrine that the tribe could not be divested of the

title to its lands without its consent. Notwithstanding these plain and unmistakable provisions of the Act of June 28, 1898, counsel for Appellees in the extract above quoted from their brief, cite this Act as a legislative precedent for the Act of June 6, 1900, the Act in question in the case at bar, which divested the Kiowa, Comanche and Apache tribes of the title to two million acres of their lands without their consent.

The Act of June 28, 1898, has been regarded by all persons familiar with conditions in the Indian Territory as coercive in its nature and as intended to constrain the Five Civilized Tribes to enter into agreements with the United States for allotment of their lands, the granting of titles to lots in towns and cities, and for the ultimate relinquishment of their tribal governments. It has certainly had that effect. Since the passage of that Act all of the Five Civilized Tribes have entered into agreements with the United States covering the points indicated. Hence the sections of said Act of June 28, 1898, to which reference has been made, have all been repealed, or have become inoperative by reason of agreements between the United States and the tribes respectively—all of which agreements were submitted to the tribes interested for ratification or rejection. Hence whatever may have been the legislative precedent, in support of the contentions of Appellees in the case at bar, which were established by the Act of June 28, 1898, such precedent was of short duration and of no benefit to Appellees.

Ninety-nine. Reference is made in Appellees' brief, page 28, to the case of Stephens *v.* Cherokee Nation (174 U. S. 445), and the opinion of this Court in that case is cited in support of their contentions in the case at bar. In that case this Court held that the legislation of Congress which the case involved was constitutional. The

only question really involved was in reference to ascertaining who were citizens of the tribe and entitled to a participation in the distribution of the lands and other property of the tribes.

As that case was so recently decided by this Court, after exhaustive argument of counsel, it is unnecessary to take up the time of the Court in this argument with a statement of the questions involved. It is sufficient to state that they were of a political character, and this Court very properly held "the entire legislation constitutional," —having reference to the legislation involved in that case. But when questions affecting the titles to the lands in the Indian Territory arose, Congress proceeded to secure the consent of the Indian tribes in every instance as has been the policy of the Government from time immemorial. Agreements have recently been made with the Five Civilized Tribes as follows :

Choctaws and Chickasaws, by Act of Congress approved June 28, 1898. 30 U. S. Stats., p. 505.

Creeks or Muskogees, by Act approved June 28, 1898. 30 U. S. Stats., p. 514.

Seminoles, by Act of Congress approved July 1, 1898. 30 U. S. Stats., p. 567.

Cherokees, by Act of Congress approved March 1, 1901. 31 U. S. Stats., p. 848.

Creeks or Muskogees, by Act of Congress approved March 1, 1901. 31 U. S. Stats., p. 861.

Cherokees, by Act of Congress approved July 1, 1902. U. S. Session Laws, 1st Session, 57th Congress, p. 716.

Creeks or Muskogees, by Act of Congress approved June 30, 1902. U. S. Session Laws, 1st Session, 57th Congress, p. 500.

Choctaws and Chickasaws, by Act of Congress approved July 1, 1902. U. S. Session Laws, 1st Session, 67th Congress, p. 641.

In all of the foregoing agreements there were provisions submitting them to the Indians concerned for ratification or rejection. In no instance was the agreement to take effect until ratified by the Indians.

The agreement with the Creek, which was ratified by Act of Congress of June 28, 1898, and that with the Cherokees, which was ratified by the Act of Congress of March 1, 1901, were both rejected by the tribes at popular elections, and Congress afterwards amended them, and resubmitted them to the tribes respectively, so as to meet the wishes of the Indians, and the amended agreements were then ratified by the Indians. It has always been the policy of Congress, in dealing with Indian tribes in respect to their lands or in respect to the lands which they occupy, to submit all treaties or agreements and all amendments thereto, to the Indians interested for their ratification or rejection. There is but one exception to this course and that is found in the Act of Congress of June 6, 1900, in question in this case. (See paragraphs of this brief First to Ninth, inclusive.)

One Hundred. The Secretary of the Interior, who is the first named Respondent in the case at bar, addressed an official letter to the Speaker of the House of Representatives on the 15th day of April, 1902 (H. R. Doc. 552, 1st Sess. 57th Congress), in which he transmitted a Memorial of the National Council of the Cherokee Nation, which submitted a form of bill for the allotment of the lands of the tribe, the disposition of town-sites and for other purposes. The Secretary stated that he considered many of the provisions contained in the memorial were "inexpedient and impracticable," and that he had therefore caused to be prepared a draft of legislation, being "a Bill to allot the lands of the Cherokee tribe of Indians in Indian Territory, and for other purposes," which was, the

Secretary stated, in his judgment, "preferable to the memorial above referred to." The Secretary's draft of the Bill, which he transmitted to Congress, and the passage of which he recommended, did not contain any provision for its submission to the Cherokee Indians for their ratification or rejection. He called attention to the fact that the Cherokee agreement, which Congress ratified by Act approved March 1, 1901 (31 U. S. Stats. 848), and submitted to the Cherokees for their ratification or rejection, had been "rejected at an election held on April 29, 1901, the majority against the agreement being 1,023 out of a total of 5,569 votes cast at the election." He then added this very important statement:

"In view of the action of the Nation in rejecting said agreement, no provision has been placed in said Bill for its submission to the legal voters of the Nation for rejection or ratification."

There is no mistaking the meaning of this proposition. At the time this proposed bill was transmitted to Congress by the Secretary of the Interior, the principal respondent herein, the case at bar was pending in this court on appeal from the Court of Appeals of the District of Columbia. A legislative precedent which the passage of the Secretary's Bill would establish, to the effect that Congress had the right to dispose of Indian lands in any manner deemed, by the law makers, advisable, without the consent of the Indians concerned, would doubtless have been cited and relied upon in argument by counsel for Appellees to sustain their contentions in this case. But Congress disregarded the suggestion of the Secretary and passed a Bill differing materially in its provisions, and added a section as follows:

"SEC. 74. This Act shall not take effect or be of any validity until ratified by a majority of the whole number of votes cast by the legal voters of the Cherokee Nation in the manner following:"

Then followed a section prescribing the manner of submission, in pursuance of a proclamation by the Principal Chief, at an election to be held by Cherokee officials, under Cherokee laws—the votes to be canvassed by the Cherokee National Council, in the presence of a member of the Dawes Commission; and said member and the Principal Chief were to make proclamation and issue a joint certificate as to the result of the election, which was to be transmitted to the President of the United States. The Act was ratified at an election held in August last, and the Bill, as passed by Congress and as ratified by the Cherokee Indians is now a law, entitled: "An Act *to provide for* the allotment of the lands of the Cherokee Nation, for the disposition of town sites therein and for other purposes," passed by Congress, July 1, 1902. (See U. S. Session Laws, 1st session, 57th Congress, page 716.) Not only was this Act submitted to the Indians concerned for their ratification or rejection, but it contained a section (Sec. 73, page 727 of said laws) declaring that the provisions of section 13 of the Act of Congress, approved June 28, 1898 (cited by counsel for Appellees as a legislative precedent, in their brief, page 27, to sustain their contentions in the case at bar,) "shall *not* apply to or in any manner affect the lands or other property of said tribe." Such are the legislative precedents on this subject. The only legislative precedent, therefore, as stated heretofore, which sustains Appellees' contentions, is found in the Act of June 6, 1900, the validity of which is called in question by the case at bar.

One Hundred and One. There is some doubt even as to whether Congress really intended to ratify the so-called Jerome Agreement with the Kiowa, Comanche and Apache Indians. The Act of ratification is entitled: "An Act to ratify an agreement with the Indians of the Fort Hall Indian Reservation in Idaho, and making appropriations for carrying the same into effect." (See 31 U. S. Stats., page 672.) The title of the Act was misleading and imperfect. The Fort Hall agreement which was ratified had theretofore been ratified by the Indians concerned, and that part of the Act did not require submission to the Indians. The so-called Jerome Agreement was inserted in said Act as section 6 by amendment. The fact that it was being amended and ratified without submission to the Indians for ratification or rejection does not appear to have been called to the attention of either House of Congress. It is highly probable, therefore, that but few Senators or members understood the full import of the measure. The subsequent course of Congress in submitting all legislative provisions affecting titles to Indian lands to the ratification or rejection of the Indian tribes concerned, supports the inference that the Act of June 6, 1900, in so far as it provided for amending and ratifying an agreement with the Kiowa, Comanche and Apache Indians, was, to put it mildly, inadvertently passed, or at least passed without a full understanding of its provisions.

Further reference to the authorities cited in Appellees' brief is deemed unnecessary.

In Conclusion.

Counsel for Appellants submit this case to this Honorable Court upon the facts set forth in the Bill of Com-

plaint, which are admitted by the demurrer, and upon the authorities cited in this argument, which are not in conflict with any other authorities not cited, with perfect confidence that the judgment and decree of the Court below sustaining the demurrer should be reversed, and the cause remanded with direction to enter a peremptory order for an injunction to prevent the Appellees from proceeding further in the premises, and a decree in full accordance with the prayer of the Bill; and directing the Court below to grant to Appellants such other and further relief as equity and the nature of the case may require.

HAMPTON L. CARSON,
WILLIAM M. SPRINGER,
Solicitors for Appellants.

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 275. Equity.

LONE WOLF, Chief of Kiowa Indians, *et al.*,
Appellants,
v.
E. A. HITCHCOCK *et al.*, Secretary of the Interior,
Appellees.

Reply Brief of Appellants in Opposition to Motion to Dismiss Appeal.

STATEMENT.

The motion to dismiss the appeal in this case states that "since the decree in the Supreme Court of the District of Columbia denying the injunction, the status of the lands in controversy and the position of the parties in interest have so far changed, that of the things sought to be enjoined nothing remains undone, the doing of which can now be enjoined in this suit."

Then follows an affidavit of Ethan A. Hitchcock, one of the Respondents, in support of the motion to dismiss the appeal. The affidavit sets forth the things that have been done since the case was disposed of in the trial court.

A careful examination of this statement reveals the fact that there are many acts, which must be done hereafter, before the act of Congress of June 6, 1900, is carried into full force and effect. Among them may be noted the following:

1. Patents have not been issued to the purchasers of town lots.

2. Patents have not been delivered to the allottees of allotted lands. The act of Congress of June 6, 1900, provides (Article V) that the titles thereto shall all be held in trust for the allottees, respectively, for the period of twenty-five (25) years, in the time and manner and to the extent provided for in the act of Congress, approved February 8, 1887, known as the Land in Severalty Act. Hence twenty-five years must elapse before this part of the act can be carried into full effect.

3. The affidavit states (page 5) that entries of homesteads and town-sites aggregating more than 7,500 acres have been carried to find proof, upon some of which patents have been issued. As nearly two million acres of these lands are occupied as homesteads and town-sites, and as only 7,500 acres have been carried to final proof, and as only on "some of which" (the amount is not stated) patents have issued, the amount of land not yet patented must amount to more than one million nine hundred thousand acres.

4. The Respondent, E. A. Hitchcock, in his affidavit filed in the court below (Record, pages 17 and 18), states that complainant Lone Wolf and the other Indians of said tribes, have selected the allotments under the act of June 6, 1900, and, as provided for in said act. But Lone Wolf, in his own affidavit (Record, pages 18 and 19), asserts that he has not accepted an allotment of land under said act; that he is occupying certain lands in the reser-

vation, and he assumes such lands will be allotted to him wherever a legal allotment is made, and he asserts that by no act of his own has he ever recognized the validity of the so-called Jerome treaty, and that he is informed and believes that substantially all the members of said Indian tribes are opposed to the said Jerome treaty, and that they have not done any act which they regard as a ratification of said treaty.

The other parties complainant in said suit filed in the court below (Record, pages 22, 23 and 24) a petition to be made parties complainant, which is sworn to by all of them, eight in number, in which petition a detailed statement of the position of the Indians interested is made. It is distinctly stated "that the entire lawful membership of said tribes is opposed to the said Jerome treaty, and especially opposed to the opening of any of their lands to settlement by white people; that they have never accepted allotments of their lands to the extent of approving said allotments; that they were told by allotting agents that they must select land to be allotted to them or said agents would make the selections which might be on poor land, and that they would be obliged to accept whatever allotments might be assigned to them."

5. The Respondent, E. A. Hitchcock, in his affidavit printed with the motion to dismiss (page 5) states, on information and belief, that since the rendition of the decree of the trial court in this case, 526 male adults of said Indians, being more than three-fourths of the total number of the male adults of said tribes, signed and presented to the Secretary of the Interior a petition, the text of which is printed on page 6 of the motion to dismiss the appeal. This petition states that the Indians "do make formal request and pray that the benefits in money provided for as by the act of Congress approved June 6, 1900,

may be paid to us in accordance with the terms and provisions of said act of June 6, 1900, and with as little delay as is consistent." "Thereafter," said affidavit states, "and in pursuance of said petition and of the provisions of Article 6 of the Comanche, Kiowa, and Apache agreement, amended and ratified by said act of June 6, 1900, there was paid and distributed per capita to the members of said tribes upward of $130,000 of the $500,000 mentioned in said Article 6, as part compensation for the lands ceded to the United States by said agreement, that the per capita payment and distribution so made was accepted by every adult member of the Apache tribe, and excepting 21 members thereof, by every adult member of the Kiowa tribe." An extract from the letter of the Indian agent in charge of the Kiowa agency explaining in what manner he procured the names to said petition is printed (page 7).

The court is respectfully referred to the affidavits and letters printed herewith in order to show how the names of the Indians were procured to said petition, and the manner in which payments were made, as understood by the Indians.

6. According to the Secretary's affidavit only $130,000 of the $500,000 appropriated by Congress have been paid out to the Indians. There still remains $370,000 of said appropriation to be paid out. And by the terms of the act of June 6, 1900, no part of the remaining $1,500,000 has been appropriated as yet, and the Indians are to receive five per cent. interest on the same until it is paid to them.

There are many other things sought by the bill of complaint to be enjoined, which have not yet been done or accomplished. But the things above mentioned will serve to illustrate that there are many very important things

which may be enjoined if this cause is remanded, with direction to the court below to grant appellants' prayer for relief by enjoining all acts of appellees which have not yet been performed in carrying said act of June 6, 1900, and other acts supplemental thereto, into effect. And as all, or nearly all, the acts of appellees, in carrying into effect the provisions of said acts were done *pendente lite*, and as there is in the bill a prayer for general relief, it would be competent for the court below, in order to fully carry into effect the opinion of this court, to issue a mandatory injunction requiring appellees to recall and cancel many of the acts already committed by them ; such, for instance, as the setting aside of a forest reserve, and the approval of the educational grants to Oklahoma, and many other acts which might be mentioned.

BRIEF AND ARGUMENT.

I.

The case at bar was disposed of in the court below on demurrer, which was sustained and, appellants standing on their bill of complaint, it was dismissed. The question before this Court is as to whether the Court below erred in sustaining the demurrer upon the bill of complaint and the facts stated therein. If this court should hold that no error was committed, the judgment of the court below will be affirmed. This will end the litigation so far as this suit is concerned. If this court should hold that the court below erred in sustaining the demurrer and in dismissing the bill, upon the facts therein stated, the judgment will be reversed, and the cause remanded with direction to proceed further, as the mandate of this court may direct. If new facts of estoppel *in pais* are relied

upon they must be specially pleaded or set up in an answer. The trial court alone can consider such facts, in the first instance, and determine their force and effect.

A final decree is not entered on overruling a demurrer, as defendant is entitled, on obtaining leave, to put in an answer to the bill.

6 Encyc. of Pleading and Practice, 430, 431, and numerous authorities therein cited in note one, page 431.

II.

Ordinarily a decree of an appellate court overruling a demurrer and remanding the cause to be proceeded with is not an adjudication of anything more than that there is sufficient equity upon the face of the bill to require an answer.

Id. page 432, and numerous authorities cited in note 8.

III.

The fact supporting an estoppel *in pais* must be clearly made out by the party relying upon it. He must allege that the party to be estopped has been guilty of misrepresentation or conduct inconsistent with the evidence he proposes to give, or the title or claim he proposes to set up. He must also allege that such misrepresentation or conduct was with intent to mislead; that the representations were known to the maker to be false, or that they were made with gross negligence, and that the fact of their being false was not known to the party setting up the estoppel. It must be shown that the party pleading the estoppel acted to his prejudice on such representations,

and that he will be prejudiced by allowing them to be disproved.

8 Encyc. of P. and P., pp. 10, 11, 12, and numerous authorities cited in note 6, on page 10, and notes 1, 2, 3, 4, 5 and 6, on page 11, and note 1 on page 12.

IV.

It may be stated, as a general rule, that the representation or concealment relied on to sustain an estoppel, must have been made with full knowledge of the facts by the party to be estopped, unless his ignorance was the result of gross negligence, or otherwise involves gross culpability, as where he is consciously ignorant of the facts at the time of professing full knowledge of them.

11 Am. and Eng. Encyc. of Law, second edition, pp. 433–434, and authorities cited in notes 2 and 3, on page 433, and note one, on page 434.

V.

It may also be stated, as a general rule, that it is essential to the application of the principle of equitable estoppel that the party claiming to have been influenced by the conduct or declaration of another to his injury was himself not only destitute of knowledge of the state of facts, but was also destitute of any convenient or available means of acquiring such knowledge, and that where the facts are known to both parties, or both have the same means of ascertaining the truth, there can be no estoppel.

Id. p. 434, and numerous authorities under note 6.

VI.

Another essential element of estoppel by misrepresentation or concealment is that one party should have relied

upon the conduct of the other and been influenced by it to act or to refrain from acting so that he will be substantially injured if the other party should be allowed to repudiate his action. And this rule applies as well where the conduct of the party to be estopped consists of silence as where it consists of positive acts.

Id. pp. 436–438, and authorities cited in note 5, on page 436, and notes 1 and 2, on page 438.

VII.

The motion to dismiss the appeal filed herein states that 526 male adults of the Indian tribes signed a petition for the distribution of money under the act of June 6, 1900.

Admitting for the sake of the argument that the persons who signed this petition are now estopped from denying the validity of the act of Congress in question, yet it cannot be maintained that the other members of the tribe were prejudiced by the fact. There are about 2,800 members of the tribes interested.

This leaves nearly 23,000 who have not been guilty of any act incurring equitable estoppel. The adults who did not sign, and the married women and infants cannot, in any view of the case, be held responsible for the conduct of those who signed the petition.

It seems to be agreed in almost all jurisdictions that to estop a married woman from asserting her rights in land, it is essential that she should be guilty of some positive act of fraud, or else of some act of concealment or suppression, which in law would be equivalent thereto; for all who deal with a married woman directly, or deal in any manner affecting her rights, are chargeable with the knowledge of her disability, and that she can only convey land in the manner provided by statute.

15 Am. and Eng. Encyc. of Law, second edition, page 802, and authorities cited in note 7.

VIII.

It is one of the peculiar duties of courts of equity to protect the rights of infants, and equity has plenary jurisdiction for that purpose.

Whenever a suit is instituted in the court of chancery relative to the person or property of an infant, although he is not under any general guardian appointed by the court, he is treated as a ward of the court, and as being under its special cognizance and protection.

The court protects the infant fully and will not allow his rights to be prejudiced by any act either of his own or of any other person.

In accordance with the rule that an infant cannot be prejudiced by any act of his own, or of any other person, his rights cannot be affected by laches.

On the same principle no decree can be taken against an infant on his own admissions or consent.

10 Encyc. of Pleadings and Practice, 588, 589, 590, 591, and authorities therein cited.

IX.

A trustee who has accepted a trust will be estopped to set up title adversely to his *cestui que trust.*

11 Am. and Eng. Encyc. of Law, second edition, 444, and note 4, citing Willison *v.* Watkins, 3 Pet. (U. S.) 48; Inby *v.* Kitchell, 42 Ala. 438; and other authorities.

The same principle has been applied to the relation of guardian and ward.

Id. 444, note 5, citing Burke *v.* Turner, 90 N. Car. 588.

In the case at bar, the Government of the United States, it has been contended, is the guardian of the Indians, who are appellants and respondents, are the agents of the Government. The Indians, all of them without regard to age, are the wards of the Government. In one sense the Government is the trustee and the Indians the *cestui que trust*.

In either relation, the Government cannot take any advantage of their acts, either as wards or as *cestui que trust*. They are all incapable of committing acts of equitable estoppel; and especially are those among them who are minors or married women.

X.

The Record does not disclose to whom per capita payments to married women and minors are paid. But it is a well-known fact that in making such payments to Indians it is the custom to pay to the heads of families the amounts due to their wives and children.

Hence by no act of the married women and the minors, who are members of said Indian tribes, can it be said that they have requested payments, or that they have accepted payments of any part of the purchase money appropriated by Congress to be paid for their lands. And as to the male adults over 21 years of age, counsel for appellees contends that they are also the wards of the Government, and stand in the same position as do white persons who are minors, and persons *non compos mentis*.

XI.

Attention of the Court is called to the language of Article 12 of the Medicine Lodge Treaty (Record, page 4).

Under the provisions of said article, the right of occupancy of the lands in question was not to be taken away from said Indians, except by treaty, "executed and signed by at least three-fourths of all the adult male Indians occupying the same."

The attention of this Court is also called to section 2116 of the Revised Statutes of the United States, which is as follows:

"SEC. 2116. No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution. Every person who, not being employed under the authority of the United States, attempts to negotiate such treaty or convention, directly or indirectly, or to treat with any such nation or tribe of Indians for the title or purchase of any lands by them held or claimed, is liable to a penalty of one thousand dollars."

Article 12 of the Medicine Lodge Treaty, and the foregoing section of the Revised Statutes, show how carefully Congress has safeguarded the rights of Indians to the lands which they occupy. Any act on their part which affects the title to their lands must be evidenced by a properly signed and executed treaty or agreement, and such treaty or agreement must be negotiated by duly authorized agents of the Government.

In view of these provisions of the treaty and of an act of Congress, how can it be contended, for a moment, that 526 male adults, out of a total of 2,800 Indians, whose rights are affected, can validate, by acts of estoppel *in pais*, a sale of two million acres of their lands to the United States, which sale has no other warrant in fact than that which grows out of such acts of estoppel?

XII.

It is conceded that where everything sought to be enjoined has been accomplished before final hearing, an injunction will be refused. Of what use would an injunction be when there was nothing to be enjoined? But in the case at bar, the things which it is sought to enjoin have only partially been accomplished. And where any part of the things sought to be enjoined are still, on final hearing, unperformed, the court will enjoin the commission of such acts, if it should appear that the complaint sets forth good grounds for equitable relief.

Holmes *v.* Calhoun Co. (Iowa, 1896), 66 N. W. Rep. 145; Goodson *v.* Richardson, 43 C. J. Ch. 790; Holmes *v.* Upton, L. R. 9 Ch. 214, note 2.

XIII.

During the argument of the case at bar, Mr. Justice White requested Mr. Carson to state whether any question had arisen as to the right of an Indian, the head of a family, to take a homestead of 320 acres of land under the last clause of Article 12 of the Medicine Lodge treaty. Mr. Carson inadvertently omitted to make any response to the request. The fact is, that at the time the bill of complaint was filed in the trial court the allotments had not been made, and no allegation of deprivation of rights was made in the bill on account of the conflict between the last clause of Article 12 of the treaty and the act of Congress of June 6, 1900. The fact was recited in the bill of complaint (Record, p. 4), that by the terms of Article 12 each head of a family had the right to acquire 320 acres of land for his exclusive use.

The provisions of the act of Congress limited each allottee to 160 acres. We have since learned that several cases have arisen, in which allottees claim 320 acres instead of 160, which were allowed them in the first instance. The cases have not as yet been finally disposed of in the Department. If this Court should hold that property rights acquired under the treaty of Medicine Lodge cannot be abrogated, except in the manner provided in said treaty, then those heads of families, who have heretofore selected 320 acres of land, will be entitled to hold that amount; but should the act of June 6, 1900, be upheld and declared valid, no more than 160 acres of land can be allotted to any member of the tribe.

XIV.

Counsel for appellees in his brief filed in this Court, pages 63 and 64, cites the case of the M., K. & T. R.R. Co. *v.* Roberts (152 U. S. 14), in support of the contention "that Congress may terminate or extinguish the Indian right of occupancy as to all or a portion of the lands reserved by a previous treaty." A careful examination of the facts in that case, and of the opinion of the court therein, will conclusively show that the case is not in point.

The opinion states (page 117) that the contention in that case was "a question of governmental policy, and is not a matter open to discussion in a *controversy between third parties neither of whom derives title from the Indians.* And by the terms of the treaty between the Osage Indians, proclaimed in January, 1865 (14 U. S. Stats. 687), it was provided in Article XI that "railroad companies, when the lines of their roads necessarily pass through the lands of said Indians, shall have the right

of way *upon payment of fair compensation*." This treaty was proclaimed in September, 1865, and Congress made the grant of right of way to the M., K. & T. R.R. Co. July 26, 1866. There was no conflict between the treaty of 1865 and the act of 1866. The railroad company had undoubtedly paid the Indians "a fair compensation" for the right of way, as there is nothing in the Record in the Roberts case to show that the Indians had ever objected to the railroad company's occupation of the right of way. The contest in the Roberts case was between third parties, neither of whom derived title from the Indians. It is not in point as an authority in the case at bar.

XV.

Counsel for appellees cited the case of Spalding *v.* Chandler (160 U. S. 394). This case is not in point. By the provisions of the treaty between the United States and the Chippeway tribe of Indians of 1820, the Indians ceded their lands at the Sault-Ste-Marie, in Michigan, to the United States. By the third article of the treaty it was provided that "the United States will secure to the Indians a perpetual right of fishing at the Falls of St. Mary's, and also a place of encampment upon the tract hereby ceded, convenient to the fishing ground, which place shall not interfere with the defences of any military work which may be erected, nor with any private rights."

It will be observed that the right secured to the Indians was "a perpetual right of fishing at the Falls of St. Mary's, and also a place of encampment upon the tract hereby ceded, convenient to the fishing ground." This right was enjoyed by about 40 lodges of Indians, containing a population of two hundred souls. But in 1855 (11 U. S. Stats., 631), the Indians voluntarily released to

the United States by a treaty this privilege retained by them in 1820. Hence at the time the case of Spalding *v.* Chandler was pending (1895) there was no question as to the fact that the entire Indian title to the land in question had been extinguished with the consent of the Indians interested. And as in the case of Roberts, *supra*, the Spalding case was between third parties, neither of whom derived title from the Indians. The language of this Court in the Spalding case to the effect that "the power existed in Congress to invade the sanctity of the reservation and disregard the guarantee contained in the treaty of 1820, even against the consent of the Indians, party to that treaty," does not go to the extent of holding that Congress has the power to deprive an Indian tribe without its consent, of the use and occupancy of lands secured to it by a solemn treaty for the absolute and undisturbed use and occupation as a permanent home, with a guarantee that no treaty for the cession of any part of the land should be of any validity or force against said Indians unless executed and signed by three-fourths of all the adult male Indians occupying the same. The right to fish in a river and to occupy a place of encampment convenient to the fishing ground is not comparable to the right which appellants in the case at bar secured under the treaty of Medicine Lodge in 1868. But, if for the sake of argument it should be conceded that Congress has, in one instance, taken for right of way of a railroad company a part of an Indian reservation without the consent of the Indians, and, in another instance, has taken, without their consent, from about 200 Indians the right to fish in the St. Mary's river, and to have an encampment on the banks of the river for their occupation, yet notwithstanding these alleged instances of arbitrary appropriation of lands, the occupancy of which had been

secured to the Indians by treaty stipulations, such instances cannot be cited as controlling against the numerous authorities cited in appellant's brief in this case, showing the absolute right of Indians to the use and occupancy of lands secured to them by treaties with the United States, until they voluntarily relinquished the same.

XVI.

A motion to dismiss the appeal in the case at bar was made by appellees in the Court of Appeals of the District of Columbia. Appellants filed a brief in opposition to said motion in said court, a copy of which is attached hereto, and attention of this court is called to the facts stated, and the authorities cited therein, in support of appellants' contention at that time.

In Conclusion.

Appellants insist that the motion to dismiss the appeal in this case should be overruled for the reasons above stated, which are, briefly, as follows:

1. That the things sought to be enjoined by the bill of complaint have not been accomplished.

2. That the doctrine of estoppel *in pais*, invoked by appellees, has no application to the facts in the case at bar, and

3. That, as this case was disposed of in the trial court on demurrer, the only question before this court is as to whether the court below erred in sustaining the demurrer and in dismissing the bill of complaint, upon the facts stated therein. If new facts are to be relied upon as matters of defence, they must be pleaded in the trial court

after the demurrer has been overruled by this court and the cause remanded for further proceedings in accordance with its judgment and opinion.

Respectfully submitted.

HAMPTON L. CARSON,
WILLIAM M. SPRINGER,
Solicitors for Appellants.

AFFIDAVITS.

I.

Affidavit of Lone Wolf, March 4, 1902.

TERRITORY OF OKLAHOMA, }
Kiowa County, } *ss:*

Lone Wolf, a member of the Kiowa, Comanche, and Apache consolidated tribe of Indians, being duly sworn, on his oath deposes and says: That he is one of the complainants in the case of Lone Wolf and others against the Seretary of the Interior and others, and also one of the complainants in the case of the same parties against the Secretary of the Treasury. That the first-mentioned suit is pending in the Court of Appeals of the District of Columbia, and the other case is pending in the Supreme Court of the District of Columbia. That this affiant and the other parties complainant were duly authorized to cause suits to be brought to prevent the opening of their lands to settlement by white men and to prevent the sale of their surplus lands under pretended acts of Congress, and that the authority was given as stated in their bills of complaint filed in said suits. That this affiant is informed and believes that Quanah Parker and Ah-pe-ah-ton, members of said tribe of Indians, have been procuring the names of Indians belonging to said tribe to a petition, addressed to the Secretary of the Interior, praying him to pay out to said Indians the appropriation of $500,000 in

payment for their surplus lands. That said Parker and Ah-pe-ah-ton have informed said Indians that if they did not sign said petition they would be out of their money for good, and that not a cent of money would be paid to them for their lands.

That said parties also informed said Indians that if said Indians did not sign said petition they would lose the 480,000 acres of their land reserved for their common use. That this affiant is informed and believes that said Parker and Ah-pe-ah-ton are about to depart for the City of Washington, with the sanction of the Indian Agent to present said petition to the Secretary, and that this petition is a part of a conspiracy to procure the dismissal of the said suits now pending in the courts of the District of Columbia, and thus to thwart, by fraud and misrepresentations, the effort of this affiant and the other authorized agents of said tribe who are complainants in said suits, in their efforts to protect in the courts the rights of all the Indians of said tribe, secured to them by a solemn treaty with the United States.

Affiant, therefore, earnestly protests against said petition receiving any consideration, either by the Secretary of the Interior or by the courts.

And further affiant saith not.

LONE $\overset{\text{his}}{\underset{\text{mark.}}{\times}}$ WOLF.

Witnesses:

ALMA BIG TREE,

AHTAPE LONE WOLF.

Subscribed and sworn to before me, a notary public, in and for the county of Kiowa, in the Territory of Oklahoma, this day of March, A. D. 1902. The said affiant, Lone Wolf, is personally known to me, and said affidavit

was read to him and duly interpreted in my presence by James Waldo, whose affidavit is hereunto attached.

[L. S.] C. GREENLAND,
Notary Public.

My commission expires August 5, 1905.

I, James Waldo, of Oklahoma, in the county of Kiowa, and Territory of Oklahoma, being duly sworn according to law, do depose and say that I understand the Kiowa Indian language and the English language; that I truly interpreted said affidavit to which the said Lone Wolf has signed his name to him, and that I interpreted to him the oath to the truth thereof, and that he fully understood the same, and that he signed and swore to the same of his own free will and accord.

And further deponent saith not.

JAMES WALDO.

Subscribed and sworn to before me, a notary public, within and for the county of Kiowa, this 4th day of March, A. D. 1902.

[SEAL.] C. GREENLAND,
Notary Public.

II.

Affidavit of Go-te-bo, Sept. 18, 1902.

UNITED STATES OF AMERICA, }
Territory of Oklahoma, } *ss:*

Go-te-bo, one of the headmen of the Kiowa tribe of Indians, and member of the consolidated tribe of Comanche, Kiowa, and Apache Indians, in the Territory of Oklahoma, being duly sworn upon his oath, says that he is one of the complainants in the suit of Lone Wolf and others against the Secretary of the Interior (E. A. Hitchcock) and others, now pending in the Supreme Court of the United States; that he is informed that an effort will

be made to have the appeal in said suit dismissed on the ground that the said Kiowa, Comanche, and Apache Indians have accepted a part of the payment for their surplus lands, from the United States, in a per capita payment made to said Indians in the month of July, or at any other time, which was made by the Indian agent for said tribe of Indians.

This affiant states, upon his oath, that he did not accept said per capita payment, or any part thereof, nor any portion of said purchase money for the sale of tribal lands, has not been accepted by this affiant at any time; that divers threats were made by the said Indian agent to induce the members of the above-named tribes to accept said purchase money, among others it was stated that if they, the said Indians, did not then accept said funds, they would at no future time be paid any part thereof, and that no other benefits would be given any of such Indians who refused to accept such purchase money. The affiant further states that the said Indians were urged to accept said payment on the ground that it was their duty to accept what was offered to them by the Indian agent without inquiring what money it was that was being paid to them.

Affiant further states that he relies upon securing a decision from the Supreme Court of the United States in the said suit above mentioned in favor of himself and all the members of the said consolidated tribe of Indians, and that he has done nothing, and will do nothing that will in any manner prejudice his rights to recover a judgment in said suit.

GO-TE-BO. his × mark

Attest:

I. W. GRAY.

B. J. DAUGHERTY.

Subscribed and sworn to before me, a notary public in and for the Territory of Oklahoma, this 18th day of September, 1902.

ISAAC W. GRAY,
Notary Public.

My commission as notary public expires April 6, 1903.

UNITED STATES OF AMERICA, } ss:
Territory of Oklahoma, }

Alma B. Ahotah, being first duly sworn according to law, says: That she speaks and writes the English language, and understands the same, and speaks and understands the Kiowa Indian language, being a member of the Kiowa tribe of Indians in Oklahoma Territory. The affiant further states that she correctly interpreted the foregoing statement to Go-te-bo, a member of the Kiowa tribe of Indians, in which he declares among other things that he has accepted no part of the purchase money for their tribal lands, which was agreed to be paid to said Indians by virtue of an act of Congress. The affiant futher states that she believes that the said Go-te-bo fully understood the nature of the instrument before signing the same under oath, as hereinbefore set forth.

ALMA B. AHOTAH.

Subscribed and sworn to before me, this 18th day of September, 1902, at my office in the city of Mountain View, Territory of Oklahoma.

ISAAC W. GRAY,
Notary Public, Territory of Oklahoma.

My commission as notary public expires April 6, 1903.

III.

Affidavit of Lone Wolf, September 19, 1902.

UNITED STATES OF AMERICA, } ss:
Territory of Oklahoma, }

Lone Wolf, a chief and headman of the Kiowa tribe of Indians, and a member of the consolidated tribe of Comanche, Kiowa and Apache Indians in the Territory of Oklahoma, being duly sworn according to law, deposes and says: That he is one of the complainants in the suit of Lone Wolf and others against Ethan Allen Hitchcock, the Secretary of the Interior, and others, now pending in the Supreme Court of the United States; that he is reliably informed that an effort will be made to have the appeal in said suit dismissed on the ground that the said Comanche, Kiowa and Apache Indians have accepted a part of the purchase price for their surplus lands as provided for by Congress, such payment of money being made by the Indian agent for the said tribe of Indians, and more particularly a payment alleged to have been made during the month of July, 1902.

Lone Wolf, the affiant, states upon his oath, that he has accepted no part of the fund provided for the payment for the surplus lands of the said Indian reservation; that although various methods have been resorted to to induce this affiant to accept said purchase money he has uniformly refused to accept any portion thereof.

This affiant further states that he relies upon securing a decision from the Supreme Court of the United States in the said suit first above mentioned in the favor of himself and all the members of the said consolidated tribe of Indians, and that he has done nothing and will do

nothing that will prejudice in any manner his rights to recover a judgment in said suit.

his
LONE × WOLF.
mark

Attest:

G. W. HICKS.
G. B. SUTTON.

Subscribed and sworn to before J. P. Whatley, a notary public in and for Kiowa County, Territory of Oklahoma, this 19th day of September, 1902.

UNITED STATES OF AMERICA, }
Territory of Oklahoma, } *ss*:

Willie Monay, being first duly sworn according to law, upon oath says: That he speaks and writes the English language and understands the same, and speaks and understands the Kiowa Indian language, being a member of the Kiowa tribe of Indians in the Territory of Oklahoma. The affiant further states that he correctly interpreted the foregoing statement to Lone Wolf, a member of the Kiowa tribe of Indians, in which Lone Wolf states that he has accepted no part of the fund authorized by the Congress of the United States to be paid to the Comanche, Kiowa, and Apache tribe of Indians as the purchase price for their surplus lands. The affiant believes that Lone Wolf fully understood the nature and contents of the said instrument before signing the same, and that he signed the same in the presence of this affiant.

WILLIE MONAY.

Attest:

G. W. HICKS.

Subscribed and sworn to before me, a notary public in and for Kiowa county, Territory of Oklahoma, this 19th day of September, 1902.

J. P. WHATLEY,
Notary Public in and for Kiowa County,
Territory of Oklahoma.

My commission as notary public expires September 5, 1903.

IV.

Affidavit of Ko-mal-ty, Little Bow, and Poor Bear, September 19, 1902.

UNITED STATES OF AMERICA, }
Territory of Oklahoma, } ss:

Ko-Mal-Ty, Little Bow, and Poor Bear, Kiowa Indians and members of the consolidated tribe of Apache, Kiowa, and Comanche Indians in the Territory of Oklahoma, being duly sworn according to law, depose and say: That they are complainants in the suit of Lone Wolf and others against Ethan Allen Hitchcock, the Secretary of the Interior, and others, now pending in the Supreme Court of the United States; that they are informed that an effort will be made to have the appeal in the said suit dismissed on the ground that the said Comanche, Kiowa, and Apache Indians have accepted a part of the payment provided for by Congress of the United States for the use of the said Indians as part payment for the surplus lands of their reservation, and more particularly that the said Indians have accepted a payment for such surplus lands made during the month of July, 1902, by the Indian agent for the said Indians.

The affiants state upon oath that they have accepted no portion of the fund offered to them for the surplus lands as stated, and that although different plans were adopted whereby it was thought the affiants might be induced to accept a part of said purchase money, they have uniformly refused the same.

The affiants further state that they rely upon securing a decision from the Supreme Court of the United States in the said suit first above mentioned in favor of themselves and all the other members of the said consolidated tribe of Indians, and that they have done nothing so far, and will do nothing in the future that will in any manner prejudice their rights to recover a judgment in said suit.

KO-MAL-TY. his × mark.

POOR BEAR. his × mark.

LITTLE BOW. his × mark.

Attest:

G. W. HICKS.

G. B. SUTTON.

Subscribed and sworn to before J. P. Whatley, a notary public in and for Kiowa county, Oklahoma Territory, this 19th day of September, 1902.

UNITED STATES OF AMERICA, }
Territory of Oklahoma, } ss:

Willie Monay, being first duly sworn according to law, deposes and says: That he speaks and writes the English language and understands the same, and speaks and understands the Kiowa Indian language, being a member of

the Kiowa tribe of Indians in the Territory of Oklahoma, and of the consolidated tribe of Comanche, Kiowa and Apache Indians in the same Territory.

The affiant further states that he correctly interpreted the foregoing statement to Ko-Mal-Ty, Little Bow and Poor Bear, in which the last-named persons state among other matters that they have accepted no part of the purchase price provided by the United States for the surplus lands of the said consolidated tribe of Indians. The affiant believes that Ko-Mal-Ty, Little Bow and Poor Bear fully understand the nature and purport of the affidavit referred to before signing the same, and that it was signed by them in the affiant's presence, after a correct and complete interpretation of the same to them.

WILLIE MONAY.

Attest:

Subscribed and sworn to before me, a notary public in and for Kiowa county, Oklahoma Territory, this 19th day of September, 1902.

J. P. WHATLEY,
Notary Public in and for Kiowa County,
Oklahoma Territory.

My commission as notary public expires September 5, 1903.

LETTERS.

I.

Big Tree to the President.

MOUNTAIN VIEW, OKLA.,
April 25, 1902.

PRESIDENT,
Washington, D. C.

DEAR FRIEND: Now my friend I will now tell you know just how my heart is and believe me truly and now I am in a different road and I'll tell you know you are like a great father which is in heaven but you ruled over us Indians and the father looks down on his children and sees what we do and now I am writing this letter to let you know I am your friend and brother through Christ our Saviour. Very long time ago I was wild but now I am in a good road and I have never meet you and do not know your face but I'll tell you some thing which you must believe and try to find me a better road for your peoples and I have seen with mine eyes here and nothing is getting along right and God looks down on you and sees if you are doing right.

Agent has treat us wrong like a dog and he takes lease money from us and would not pay us and we can not tell any body that can help us through so now I am writing to you to tell you to see this letter and believe truly, and now while I am telling you I am not a drunkard or Ghost dance and I have only one wife not two and I am walking in the foot steps of my Saviour so believe me. And if

you should help his children he will bless you more and more every day.

I am very poor but I am letting you know believe me,

As a true friend,

BIG TREE,

Mountain View, Okla. Terr.

II.

Lone Wolf to Mr. Springer.

HOBART, O. T., *April* 28, 1902.

HON. WM. M. SPRINGER,

Washington, D. C.

DEAR SIR: On the 22d day of April, 1902, the Council of the Chiefs of the Kiowa, Comanche and Apache tribes met at Anadarko, O. T.

Present, Lone Wolf, Chief of the Kiowas, and other chiefs.

It was decreed by the Council that they wish you to proceed in the cause under consideration in the Supreme Court of the United States, and do all you can for its success.

The Indian Agent at Anadarko got angry, and left the Council when $2.50 was mentioned instead of $1.25.

Please present petition if you think there is hope.

his
LONE × WOLF,
mark.

Chief of Kiowas.

Witness:

A. M. LOCKE.

III.

Nahwats to Mr. Springer.

FORT SILL, O. T., *April* 23, 1902.

WILLIAM M. SPRINGER,

DEAR FRIEND: I am very much pleased with your kind and welcome letter which I received a few days ago. I tell all our friends about your letter and they thought you was the best friend of all. They keep a going with their signed and now they thinking about get money by next month On this letter I would made all the report that I know of. Lots of the Indians don't sign they names and all the Indian traders got mad with them because they didn't signed their names for the money. The traders told us if we dont sign we can't get no money until about two years. Thats all the trouble they made. If the Indian dont sign for money the traders wont let him make any creded. And we cant get no wire for our allotment unless we sign the paper they has got. My own allotment is ready to fence and I had a ferce farmer at Fort Sill to inspect a post around my allotment and he gave me an order to get wire at Anadarko where the Indian Agent is. I went over their very glad and Col. James F. Randlett ask me what I want, I told him that I got order here with me for the wire and I gave it him the letter and he opened the letter and read it and he said to me if I am going to sign for the money he would give me the wire. If you dont signed you can't get no wire. Thats what he said to me when I was at Anadarko. All the Indian traders and indian agent says you can't do nothing for us, They said the only thing you want is all our money for

the land. We tread [trade] our names for the wire and its makes me feel off bad because none of the workers here didn't like the indians who are not signed for the money. If you are wish you can report to indian departments We feel we didn't got nobody to look after us. Last Saturday Col. J. F. Randlett was here for the indians to sign him and Quanah Parker, The same day while they signed Quanah Parker told to the indians who are signed that Eschiti wasn't Chief any more their discharge him, and he assured and found it out about that. They talks bad about you and also about us. The Indians who are signe they makes fun of us to. And I want you to tell me what we are going to do about it, Springer please tell me when we are going get any money. You see the indian traders wont let us make any creded and we just thinking what we are going to do when they doing us that way. They dont gave us nothing but the indians who are signe. W. M. Springer My name is Willie Ahdosy assistant farmer at Fort Sill. Nahwats told me to answer your letter for him. I didn't signe and the agent say why I didn't signe and I told the agent because I signed lots and my signe dont do me a good. And I think any self that they going to dis charge me for been I am assistant farmer. They dont get your letter soon I guess they keep it in the P. O. to long. This is the only letter we got soon. You wrote a letter to Mar-Mo-Sook-Car-wer on 8 of March and we receive it on 19 of April and I wish for you to address to me My brother Ernest Ahdosy write for Nahwats the other time. We would very glad for you come down any time you want. What are we going to do about the big pasture south of Fort Sill. Col. J. F. Randlett told the indians to put stock in big pasture and he said the indians have to pay dollar a head for such stock every year and I like

to found it out if you know anything about it please write down and tell me all about it.

Excuse me for any misstak.

Answer soon as possibly can.

Your true NAHWATS.

Write by Willie Ahdosy. Write me a letter.

IV.

Lone Wolf and Sixteen Others to Mr. Springer.

ANADARKO, OKLAHOMA, *July* 13, 1902.

Judge W. M. SPRINGER,

1416 *F St. N. W., Washington, D. C.*

GOOD FRIEND: We, the undersigned members of the Kiowa and Comanche tribes, wish to write you concerning our affairs. We think we ought to have by rights the say so in some things, but the way the things are running we have no rights whatever.

We thought we have plenty of grass money, but Agent Randlett tells us that we have none.

A few weeks ago there was a paper circulated among our people for signatures, the paper was gotten up by Agent Randlett, we do not know to this day the contents of the above-mentioned paper, there for we ask you to look up the paper and let us know the contents of the same.

We want a good inspector to come to this place so that we might have a chance to show up the wrongs that was and is being done us.

When you write remember to address a letter to Say-Co-Da, an Apache for the Apaches.

We want an inspector to come, and when one comes

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we will show that our present agent is not fit to be over us who needed a wise man to lead and rule us.

LONE WOLF,
Chief of Kiowas.

KOMALTY. his × mark

WO-HAN. his × mark

BIG TREE. his × mark.

KO-TE-BO. his × mark.

JACK-LONE WOLF. his × mark

E. M. FULLER. his × mark.

AH-TAPE-TY.

ESHITIE, *Chief.*

LOUIS FULLER,
Interpreter for Comanches.

HUMMING BIRD.

KIOWA JIMMY.

GEO. CHAT.

SPOTTED BIRD.

LITTLE BOW.

ELK TONGUE.

TOU-WI-CAR-NE.

Address Say-Co-Da at Apache, Caddo Co., Okla. T.

V.

Lone Wolf and Six Others to Mr. Springer.

ANADARKO, OKLA., *Feb.* 19, 1902.

Judge WM. M. SPRINGER,
Washington, D. C.

FRIEND SPRINGER: Since Monday the Indians have been signing a petition to Secretary to pay out at once the $500,000 for our sulpus land.

Randlett and his pets Quanah and Ah-pe-ah-ton have been watching for this chance. They have resorted to their old tricks lieing.

They have told the Indians that if they (Indians) do not sign the petition they would be out of their money for good. That not a cent of the money for their land would be paid.

The Indians being weak after the small payment which was made a few days ago they have secure many names. You will find, if you had a chance to see the petition, the names of some of the signer to the papers you have, but in all such cases the trio did some smoth talking to get the names.

Another thing the trio told that if the Indians did not sign the petition they would lose the 480,000 acres set aside for their common use.

We understand that the Commissioner of Indian Affairs have given permission for a delegation to visit Washington City. And that Randlett has given his pets Quanah and Ah-pe-ah-ton permission to go to Washington. Why should not one of our people go? See Jones about this.

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Wire if necessary as the delegation intends to leave as soon as the signing was over.

Excuse the poor paper.

Respectfully,

LONE WOLF,
WATER-MAN,
HUMMING BIRD,
KO-MAL-TY,
KO-TE-BO,
WHITE BUFFALO,
BIG TREE.

VI.

Big Tree to Mr. Springer.

MOUNTAIN VIEW, OKLA., *April* 25, 1902.

WILLIAM M. SPRINGER,
Kellogg Building,
1416 *F Street, Washington, D. C.*

DEAR FRIEND: We all received your letters and are so glad to hear from our kind friend. Now I will tell you about the council because I seen it with my own eyes and what the Agent said to us all. And now we talked to the Agent about the cattles grazing on our allotments and Oh, he is very mad and he talked bad but we just wait for him to quit and then we talked to him again, and then the Agent got up and said before we got through talking your Indians that comes here you seem to make me mad and I suppose you want to tell your lawyer about it but I do not care you can tell him if you like. That is what the Agent said. And then I said now Agent listen to me nicely and see what I tell you dont kick about the Lawyer for I am not talking about that.

There are many Agents here but they are all good but this Agent is not good and I suppose your people sent him to treat us wrong and has treated us like a dog.

And now the Indians has told us that the Agent told them they would receive money and now they dont write there name on the paper. He gives wire when the Indians put their names on a paper and now is it right for him to do it? Did the people there tell him to sell wire for names and did they tell him to sell beef to Comanche for names. He went over there and killed two cows and was selling beef for names this is what the Comanche were told us all.

Now this all I'll tell you. I send you a letter from Agent what he said and when you write send it back when you through reading.

Your truly friend,

BIG TREE,
Mountain View, Oklahoma.

P. S.—Copy this letter and send it to the President.

[NOTE.—The letter of Agent Randlett, referred to in the above letter, is printed below.]

VII.

Agent Randlett to Big Tree.

JPB. DEPARTMENT OF THE INTERIOR,
UNITED STATES INDIAN SERVICE,
KIOWA AGENCY,
ANADARKO, OKLAHOMA, *April* 4, 1902.

BIG TREE (Kiowa Indian),
Mountain View, Oklahoma.

MY FRIEND: I have your letter wherein you complain that you have not received lease money on your allotments. This will inform you that I have not yet received

payments on but a few of the leases that have been made on allotted lands, and have not yet made any payments to the Indians on their leases. When the lease money has all been paid in, regular rolls will be made up in the Agency office and Indians will be paid in same way the regular grass payments have been made. Each Indian will receive the rent money from his own allotment.

I do not understand what you mean by the cowboys paying Elk Creek Indians, as no one has a right to make a lease with an Indian unless he comes to the office and has the lease made in due form, as is required by the law governing such cases, and white people who enter into contracts with Indians, disregarding the authority of the Agency, will be ejected from the Indian lands.

It appears that yourself and a few others of the Kiowas are determined not to pay proper respect to Agency authority and to make the duties of your agent as disagreeable as you can.

I am always pleased to do for you and the disaffected Kiowas the same as I do for those who are loyal to me and take my advice, and I have borne with patience such impudence as is contained in the letter to which this replies; however, now I am beginning to feel that you and the others of your kind are entitled to very little sympathy from me, and now have to say to you that unless you can pay to me proper respect in the letters you send me I must decline to notice them.

You and your associates are working in a way that, if continued in, will bring great hardship to the tribes to which you belong. While it appears to be of no use to advise you, I feel it my duty to say that you will surely see the day when you will regret that you refused to accept my advice.

Your friend,

JAMES F. RANDLETT,

Lt.-Col. U. S. A., U. S. Indian Agent.

VIII.

William Tivis to Mr. Springer.

RUSH SPRING, I. T., *April 2nd*, 1902.

DEAR SIR:

Mr. William M. Springer.

It has been a long time since I heard from you and I would like to hear from you now.

I expect you know how the Agent is getting the names of some Indians. Some of them have to signed it in order to get some wires, if they dont sign it I guess they wont get no wires.

Please let me hear from you soon. I expect they are still working to get more names.

I am working on farm.

From yours,

WILLIAM TIVIS.

[NOTE.—William Tivis is an Indian, and one of the complainants named in the bill of complaint.]

IX.

Eschiti, Comanche Chief, to Mr. Springer.

COMANCHE INDIAN TERRITORY,
Jany. the 11, 1902.

MY DEAR MR. SPRINGER: You letter of the 27th of Dec. last, is now on my hands. We wish you success in our business. We have had not a General Council. I told my people about your letter. We will not do anything to mislead our attorney. We will not accept the $50 dol-

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lars. I meet Quannah Parker the other day and had a conversation with him. He said Eschiti I have heard that Mr. Springer is to prevent us from getting land money, which is $50. I believe that if I and you go and see the Indian Agent and ask for our money he will give it to us. I told Quannah that I would not accept the $50 dollars unless my attorney advise me to do so. The grass money we want it. We hope to hear from you soon.

Your friend,

ESCHITI,
Comanche Chief.

(When write send the mail to the care of S. D. Caerday, Comanche I. T.)

X.

Lone Wolf to Mr. Springer.

HOBART, OKLA., *Dec.* 27, 1901.

Judge WM. M. SPRINGER,
Washington, D. C.

MY DEAR FRIEND: In my last letter to you I said that I would write to you about a council to be held the following Monday, as soon as the council was over.

I would have written had I been able to find a person to do the writing for me. Christmas was another cause which delayed this letter.

At the above-mentioned council I was instructed to write to you and state that the Kiowas have decided to go to the agent's office and say to him that the Indians will not accept any part of the money which the Government intended to pay for our land which the white settlers have taken up.

We want to have this matter righted before we will accept a cent of the Government's money. We wish you and our friends in Congress to help us as much as they and you can.

We believe that, while everything seems to be against us, we will succeed. There is just God who rules the affairs of this Government.

We feel that our land is worth more than $1.00 per acre. We think its worth is $2.50 an acre. We intend to fight this to the bitter end.

The Government officials need not think that they can make us give up fight by threats. The land is ours and have a right to fight for it, as Washington did for these United States.

We feel that this matter is of great importance to us and to the Government, hence we expected our friends to treat this matter as such.

For the reasons mentioned above, I spent much of my time in Washington trying to help my people. I trust and believe that this will come out right.

Keep us inform of your doings and other matters.

Your friend,

LONE WOLF.

XI.

Spotted Bird to Mr. Springer.

HOBART, I. T., *Sept.* 13, 1902.

WM. M. SPRINGER,

DEAR FRIEND: Now I will write to you and tell you that I want some help from you, and the commissary of that I will do what I wanted. Last year I leased my land to a white man by the name of Lily, the agent said for

as to lease lands so we will get some money for our living and so I lease same, and the agent told us that he was going to pay us some time in July but he did not pay me yet, and that is what I am going to tell you about. When the agent pay out the land money, I am the one that did not get it and so that is why he did not pay me the lease money. I thought I would get the money and get some thing what I needed but the agent did not pay me and so help me as soon as you find this letter. Why is it that the agent did not pay me help me and do all you can, so I will get my money so you both help me that I will get money soon, for I need it very much. Help me all you can. I am the brother of Lone Wolf.

SPOTTED BIRD,
Your friend.

XII.

Lone Wolf to Mr. Springer.

HOBART, O. T., *Aug.* 18, 1902.

WM. M. SPRINGER,

DEAR FRIEND: I have received your letter and I was glad to hear from my friend again awhile back I sent telegram to you and I felt very glad, but from there when I did not hear from you I felt as though I was blind, but when I heard from you again I felt as though you gave me a light in my eyes. It was you that was telling me to be patient and so I have took your word and did what you have told me to do and there are twenty-four men that have did the same, as I am we are trying to do what is right for us and are trying to be strong we dont listen

to the people what they say, and did not accept the money because we believe what you say.

The agent Randlett thinks we are little children and these man that are on our side dont like it and so they are trying to be strong. We want what is right and think that God will protect us from all evil. When I was up there to Washington they sent me over there to do what was right for us to do but now the Agent is trying to take away, all the men that were on our side and the Indian when they hear what he say they believe him and do what he told them but I say again that he thinks we are little children and he do what ever he pleases. And we dont listen to him It was them that told me to the work and I know that my name is in the law, but they have turned back and there are twenty-four men that did not do what they are doing because we know that you are right and to do what you tell us to do, and what is right. The Agent told us that, we are not going to get any money if we dont get what he is giving out now and he told us that we are not going to get any more afterwards if we dont get what he is giving out but we dont care we are doing what you have told us and are not afraid, and when you are up to Washington do what is right and when you know anything write to us for we always feel happy when we hear from you. Hand this to all that you know are right and give my love to all I know.

Your noble friend,

LONE WOLF.

Written by his daughter Ahtape.

XIII.

E. M. Fuller to Mr. Springer.

ANADARKO, O. T., *July* 30, 1902.

HON. W. M. SPRINGER,
Washington, D. C.

Dear Sir as a citizen of this country and my wife a member of the Comanche Indian and being interested and offiliated with them and would like to be posted in the Indian affairs at Washington 1st Will say that wee are deprived of all information that wee think wee should be in titled to at this office wee are now in a Small council of which you will see the proceedings of) with this letter as there is a few Indians has refused to receive any money on the grounds that the agent informs some of them that this is land money that is being paid them and that this fifty dollars is there first payment on the land and other he informs that it is grass money now wee dont understand the reason or the motive the agent has in telling one part one thing and the rest rite to the reversed there is a good number and I think the majority of the Indians have come to the conclusion that our agent is not our friend and useing us and his office for purposes not to our interest I am in possession of your letter of July 19th to Miss Big Tree so here you state that there was $35,000 of this money that was grass money and the 37,500 was land money pleas explan this to me now if this is grass money those Indians are very much in need of money) I would be very glad to corispond with you in the matter as I can furnish you with a grate deal of information when you desire the same

Hoping to hear from you soo your ever good Obt

E M FULLER

Apache, O. T.

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Court

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Appeal

Brief

IN THE

Court of Appeals of the District of Columbia.

OCTOBER TERM, 1901.

LONE WOLF ET AL., APPELLANTS.

v.

ETHAN A. HITCHCOCK ET AL.

No. 1109, *Equity.*

Appeal from the Supreme Court of the District of Columbia.

BRIEF OF APPELLANTS IN OPPOSITION TO APPELLEES' MOTION TO DISMISS THE APPEAL.

STATEMENT.

Counsel for appellants has been notified that on Tuesday, December 3d, appellees will submit a motion "to dismiss the pending appeal in this case, upon the ground that that which is sought to be restrained has already been performed and accomplished."

Counsel for appellants, owing to the fact that he is compelled to leave the city for a few days without being able to see appellees' brief in support of this motion, is at a loss to anticipate the facts and the law which will be submitted in support of this motion. But counsel for appellants takes issue with the appellees upon the question of fact "that that which is sought to be restrained has already been performed and accomplished."

The Injunction.

By reference to the bill of complaint in this case (Record, pages 1 to 15), it will be seen that appellants seek to enjoin and restrain the appellees from carrying into effect section 6 of an act of Congress entitled, "An act to ratify an agreement with the Indians of the Fort Hall Indian Reservation, in Idaho, and making appropriation to carry the same into effect," approved June 6, 1900 (see 31 U. S. Stats. at Large, 676–681). Two other acts of Congress were cited, one approved March 3, 1901, and the other January 4, 1901, as supplementary to the act first named. The provisions of those acts which appellants insist are unconstitutional and void, and to prevent the carrying of which into effect, this suit was brought, were pointed out in the bill of complaint in detail; and the bill prayed that appellees be commanded "to absolutely desist and refrain from doing any of the acts and things complained of, as herein set forth, and especially from proceeding further in carrying into effect the provisions of said void acts of Congress." There was also a prayer for such other and further relief as the nature of this case may require.

Appellants concede the fact that some of the acts complained of have been accomplished. But they insist that there are many provisions of the acts of Congress, against

the execution of which an injunction is prayed, that have not yet been performed and accomplished, and in proof of this allegation, appellants cite the following:

First. In Article 3 of the alleged agreement, which is a part of the act of June 6, 1900, it is provided that sections 16 and 36 of the lands in question should not be subject to homestead entry, but that they should be held and sold for public school purposes. And by another provision of the act these sections of land were to be conveyed to the Territory of Oklahoma for public school purposes. As all this land, including sections 16 and 36, belongs to the Indians, as contended by appellants, there is no valid authority for turning over these sections to the Territory of Oklahoma for general school purposes.

Appellants are not advised as to whether these sections have at this time been patented to the Territory of Oklahoma or not. But if they have been so patented, such conveyances would be utterly void, and the acts of the appellees in issuing the patents would be *ultra vires* and without valid authority.

Second. By Article 5 of the alleged agreement, which is a part of the act of June 6, 1900, it is provided that the titles to allotments are held in trust by the United States for the allottees for twenty-five years, as is provided in the general allotment acts of February 8, 1887, and February 28, 1891. Thus it appears that it will be twenty-five years before this part of the act can be fully carried into effect.

Third. By Article 6 of the alleged agreement, which is a part of the act of June 6, 1900, the United States agrees to pay the Indians $2,000,000.00 for the land to be opened to settlement by white men, and $500,000.00 of this amount were appropriated "to be distributed per capita to the members of said tribes at such times and in such manner as the Secretary of the Interior shall deem to be for the best

interests of said Indians." And that the other $1,500,000.00 must remain in the Treasury of the United States, and draw interest at 5 per cent, which interest shall annually be paid to said Indians by the Secretary of the Interior per capita.

No part of this appropriation has as yet been paid to said Indians, and payments of interest from year to year, as it accrues, cannot be fully performed or accomplished until an indefinite time in the future. If the injunction prayed by the bill of complaint is granted, no part of the $500,000.00 already appropriated can be paid out, for the reason that the Indians have never agreed to sell their land and the appropriation to pay for such land would be an unlawful disposition of the public revenues. If there were no other part of the act of June 6, 1900, which had not yet been carried into effect, this provision would be sufficient to warrant the issuing of the injunction.

Fourth. One of the provisions of the act of June 6, 1900, is to the effect that the settlers upon the lands opened to settlement—about two million acres—may, after fourteen months, commute their entries by cash payments at $1.25 per acre, and if they elect to do so, patents may issue at that time. It will be at least a year from this time before such commutation and cash payments can be made. Hence no patents have as yet issued to the thirteen thousand homesteaders who have located on said lands, and none can issue for more than a year from this time. Appellants insist that the issuance of such patents would be in violation of their property rights, and that the appellees have no valid authority for issuing them. The bill of complaint in this case prays the court to enjoin the issuing of such patents, as this would be carrying said act into effect. This has not been performed or accomplished, and the injunction should issue to prevent such unlawful acts.

Fifth. The act of June 6, 1900, contained a provision extending the mining laws of the United States, upon the passage of the act, over the lands allotted to said Indians or opened to settlement (Record, page 11.) Counsel for appellees has cited in his brief, pages 82 to 88, an opinion approved by the Secretary of the Interior, which practically nullifies this provision of the act. But this opinion may be overruled at any time by the Secretary or by his successor, and he may hereafter decide that he has the authority under said provision to recognize as lawful mineral locations upon said lands. Appellants insist that the evident intent of said provision was to extend the mining laws of the United States over their lands, in violation of the Medicine Lodge Treaty, and that the provision is wholly void. They desire the opinion of this honorable court to this effect, and an injunction restraining the Secretary of the Interior and the Commissioner of the General Land Office from ever hereafter permitting mineral locations to be made upon the lands in question. Nullification by judicial decree is preferable to nullification by an executive order.

The Law of the Case.

In the case of Young *v.* Campbell (75 N. Y. 525), it was held by the Court of Appeals of New York, that the fact that the object of the suit may be defeated by refusing a temporary injunction, does not of itself deprive the court of all discretionary power in the matter.

There is a prayer in the bill for "such other and further relief as the nature of the case may require." Under this general prayer, notwithstanding the fact of the refusal of a temporary injunction, and the utter disregard of the pending application for an injunction by the appellees, this court is not deprived of its discretion, or of its power and jurisdiction to enjoin further acts of appellees in the matter of carrying said void acts of Congress into effect. As long

as there is any one act which remains to be performed under said void acts of Congress, or any equitable right threatened, this court may enjoin such act.

In the case of Holmes *v.* Calhoun County (66 N. W. Rep. 145), the Supreme Court of Iowa held that where a part of the relief prayed for could be granted, the injunction as to that should be allowed.

This authority is exactly in point. But it hardly seems necessary to cite an authority to sustain a proposition so thoroughly just and equitable.

In Conclusion.

Counsel for appellants contends that his clients are entitled to a judgment in this case as of the date of the dismissal of the bill of complaint by the court below. This court has no original jurisdiction. Its powers are purely appellate. Nothing but the death or resignation of office of the appellees, or an act of Congress taking away this court's appellate jurisdiction, can take away their power and jurisdiction to hear and determine this case upon the facts as they appeared in the record when the appeal was prayed and taken in this case. Appellees should not be permitted to come into a court of equity and set up the fact that they have taken advantage of the failure of the court below to issue the temporary injunction and have performed those acts, pending an appeal in the case, which the bill of complaint sought to enjoin. It would have been more in accordance with precedent and with a due regard for the dignity of the courts, if a temporary injunction had been conceded, and the appellees had awaited the judgment of this court and of the Supreme Court of the United States before proceeding further in a case of such grave import and of such far-reaching consequences.

WILLIAM M. SPRINGER,
Solicitor for Appellants.

No. 275.
By of Atty. Gen'l Van Devanter
for Appellees.
Filed Oct. 18, 1902.

Office Supreme Court U. S.
FILED
OCT 18 1902
JAMES H. McKENNEY,
Clerk

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

LONE WOLF, ETC., APPELLANTS,
v.
ETHAN A. HITCHCOCK, SECRETARY OF THE INTERIOR, ET AL., APPELLEES.

No. 275.

ON APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEES.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

LONE WOLF, PRINCIPAL CHIEF OF THE KIOWA tribe of Indians; Eshitie, principal chief of the Comanche tribe of Indians; White Buffalo, Ko-Koy-Taudle, Mar-Mo-Sook-Cer-Wer, Nar-Wats, Too-Wi-Car-Ne, William Tevis, and Delos K. Lonewolf, all members of the Kiowa, Comanche, and Apache tribes of Indians, appellants,

v.

ETHAN A. HITCHCOCK, SECRETARY OF THE Interior, William A. Jones, Commissioner of Indian Affairs, and Binger Hermann, Commissioner of the General Land Office, appellees.

No. 275.

ON APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEES.

The appellant, Lone Wolf, filed his bill (subsequently amended by the addition of other complainants) in the supreme court of the District of Columbia, asking that the appellees be restrained from carrying into effect the act of Congress approved June 6, 1900 (31 Stat., 672, 676), amending and ratifying an agreement with

the Comanche, Kiowa, and Apache tribes of Indians, whereby the Indians ceded to the United States their interest in and claim to certain lands described in the agreement, and also from carrying into effect the act of March 3, 1901 (31 Stat., 1093), making further provision as to the manner of disposing of the lands so ceded. (Record, pp. 7–16 and 19–25.)

An application for a temporary injunction was denied, the opinion of Justice Bradley given thereon being in the record (pp. 26–34).

The defendants demurred to the bill (record, p. 34) upon the following grounds:

> 1. Said bill of complaint, with the amendment thereto, is bad in substance, and does not state facts sufficient to entitle the complainants, or either of them, to the relief prayed for or to any relief.
>
> 2. The court has no jurisdiction over the subject-matter of the suit.
>
> 3. The complainants, as individual members of said Indian tribe, are without title to the relief prayed for or to any relief.

This demurrer was sustained and a decree entered dismissing the bill. (Record, p. 35.) From that decree appeal was prosecuted to the court of appeals of the District of Columbia, which affirmed the lower court (Record, pp. 37–44), and afterwards overruled a motion for reargument. (Record, pp. 46–47.) From the judgment of affirmation this appeal is prosecuted.

During the pendency of these proceedings the appellants instituted a like suit in the courts of Oklahoma,

where the lands in question are situate, against the local representatives of the Secretary of the Interior, in which suit Justice Irwin, of the supreme court of that Territory, reached the same conclusion as that announced by Justice Bradley, of the suppreme court of the District of Columbia, in the suit at bar and entered a decree dismissing the bill.

A statement of the conditions which led to and made necessary the legislation assailed by appellants is given in the concluding subdivision of this brief.

POINTS AND ARGUMENT.

EFFECT OF THE DEMURRER.

The rule as to the effect of a demurrer and as to the matters which are admitted thereby to be true is so clearly and concisely stated in a recent decision of the court of appeals of the District of Columbia (*Maese* v. *Herman*, 17 App. D. C., 52, 59) that we quote it here. That statement is:

> It is a well-settled principle in the law of demurrer that, while the demurrer admits as true, for the purposes of the decision invoked by it, all facts well and sufficiently pleaded, yet it does not admit as true mere matters of law which the pleader may think proper to state in his pleadings, nor the conclusions drawn from the facts stated therein. That is for the court exclusively. Nor does the demurrer in any manner admit the correctness of an allegation as to the construction of a statute, or of a grant, or other document, or official act that may be insisted upon by the pleader, as the foundation

> of his claim and title, or that may be set up in opposition thereto. That is matter of law for determination by the court. These propositions are too clear to require citations of authority for their support.

The averments in this bill, which amount to statements of the legal effect of any law or document or act of an officer of the Government, of which the court takes judicial notice, are not admitted. There are also facts of which the court takes judicial notice, in the absence of any allegation or even in the face of an allegation setting forth a different state of things. (Daniels's Chancery Pleading and Practice, vol. 1, p. 522, 5th ed.)

In the case of *Knight* v. *U. S. Land Association* (142 U. S., 161, 168–169), Justice Lamar, in the statement of the case, said:

> To understand precisely the exact nature of the questions involved in this case a somewhat more detailed statement of facts than is contained in the above findings of the referee will be found useful. These facts are not contradictory of those findings, and are recited in former decisions of this court, statutes of the United States, and of the State of California, and the records of the Interior Department, of all of which the court can take judicial notice.

The dealings of the Government with the Indian tribes within the geographical limits of the United States, but no part of the body politic, form such an important phase of the political history of the country and its development that the courts will take judicial

notice of those dealings, as shown by acts of Congress, public documents printed by authority of Congress, orders and proclamations of executive officers, and the records of the Interior Department.

THERE ARE CERTAIN RULES WHICH THE COURTS WILL OBSERVE IN CASES INVOLVING THE VALIDITY OF AN ACT OF CONGRESS.

This is a proceeding to secure a declaration from the courts that the act of Congress of June 6, 1900 (31 Stat., 672, 676), is unconstitutional and of no effect. The courts are asked to say that a coordinate branch of the Government has exceeded its powers. That, this court is ever reluctant to do, and in such cases will resolve every doubt in favor of the validity of the statute. The position assumed by this court as early as 1810 was defined by Chief Justice Marshall, in *Fletcher* v. *Peck* (6 Cranch, 87, 128), in the following words:

> The question whether a law be void for its repugnancy to the Constitution is at all times a question of much delicacy which ought seldom, if ever, to be decided in the affirmative in a doubtful case. The court, when impelled by duty to render such a judgment, would be unworthy of its station could it be unmindful of the solemn obligations which that station imposes. But it is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers and its acts to be considered as void. The opposition between the Constitution and the law should be such that the judge feels a clear and

> strong conviction of their incompatibility with each other.

The rule is again stated by Chief Justice Waite in *Sinking Fund cases* (99 U. S., 700, 718), as follows:

> It is our duty, when required in the regular course of judicial proceedings, to declare an act of Congress void if not within the legislative power of the United States; but this declaration should never be made except in a clear case. Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt. One branch of the Government can not encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule.

This has been recognized as the settled rule of construction in many other cases, among them being *Powell* v. *Pennsylvania* (127 U. S., 678, 684); *Angle* v. *Chicago, St. Paul, etc., Railway* (151 U. S., 1, 18); *Chicago and G. T. Ry. Co.* v. *Wellman* (143 U. S., 339, 346); *United States* v. *Old Settlers* (148 U. S., 427, 466); *Nicol* v. *Ames* (173 U. S., 509, 514–515).

As stated in Cooley's Constitutional Limitations (6th ed., p. 217), the rule to be deduced from the authorities is as follows:

> The constitutionality of a law, then, is to be presumed, because the legislature, which was first required to pass upon the question, acting, as they must be deemed to have acted, with integrity and with a just desire to keep within

> the restrictions laid by the constitution upon their action, have adjudged that it is so. They are a coordinate department of the government with the judiciary, invested with very high and responsible duties, as to some of which their acts are not subject to judicial scrutiny, and they legislate under the solemnity of an official oath, which it is not to be supposed they will disregard. It must, therefore, be supposed that their own doubts of the constitutionality of their action have been deliberately solved in its favor, so that the courts may with some confidence repose upon their conclusion, as one based upon their best judgment.

In such cases the courts have no authority to inquire into the motives of the legislators or as to the expediency of the legislation, the inquiry being limited to the question of power. In *McCulloch* v. *Maryland* (4 Wheaton, 316, 423), after finding that the law there under discussion provided an instrument necessary as a means to effect legitimate objects of the Government, it was said:

> But were its necessity less apparent, none can deny its being an appropriate measure; and if it is, the degree of its necessity, as has been very justly observed, is to be discussed in another place. Should Congress, in the execution of its powers, adopt measures which are prohibited by the Constitution, or should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted to the Government, it would become the painful duty of this tribunal,

> should a case requiring such a decision come before it, to say that an act was not the law of the land. But where the law is not prohibited, and is really calculated to effect any of the objects intrusted to the Government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the Judicial Department and to tread on legislative ground. This court disclaims all pretensions to such a power.

In *United States* v. *Des Moines Navigation and Railway Company* (142 U. S., 510, 544) the court quoted with approval a passage from Cooley's Constitutional Limitations as stating the correct rule. It was there said:

> * * * The knowledge and good faith of a legislature are not open to question. It is conclusively presumed that a legislature acts with full knowledge and in good faith. It is true the bill alleges that its passage was induced by the navigation company by false representations and threats of suits, but such an allegation amounts to nothing. In Cooley's Constitutional Limitations (5th ed., 222) the author, citing several cases, observes: "From what examination has been given to this subject, it appears that whether a statute is constitutional or not is always a question of power; that is, a question whether the legislature in the particular case, in respect to the subject-matter of the act, the manner in which its object is to be accomplished, and the mode of enacting it, has kept within the constitutional limits and observed the constitutional conditions. In any case in which

this question is answered in the affirmative the courts are not at liberty to inquire into the proper exercise of the power. They must assume that legislative discretion has been properly exercised. If evidence was required, it must be supposed that it was before the legislature when the act was passed, and if any special finding was required to warrant the passage of the special act, it would seem that the passage of the act itself might be held to be equivalent to such finding. And although it has sometimes been urged at the bar that the courts ought to inquire into the motives of the legislature where fraud and corruption were alleged, and annul their action if the allegations were established, the argument has in no case been acceded to by the judiciary, and they have never allowed the inquiry to be entered upon."

In *Angle* v. *Chicago, St. Paul, etc., Railway Co.* (151 U. S., 1, 18) the decision in *Fletcher* v. *Peck* (*supra*) was quoted from, and it was said:

> * * * The rule, briefly stated, is that whenever an act of the legislature is challenged in court the inquiry is limited to the question of power, and does not extend to the matter of expediency, the motives of the legislators, or the reasons which were spread before them to induce the passage of the act. This principle rests upon the independence of the legislature as one of the coordinate departments of the Government. It would not be seemly for either of the three departments to be instituting an inquiry as to whether another acted wisely, intelligently, or corruptly.

The rule is again laid down in *Lindsey & Phelps Co.* v. *Mullen* (176 U. S., 126, 146).

The allegations made in the bill of complaint and the grounds upon which it is asked that said act of June 6, 1900, be declared unconstitutional and void, present matters which might have been properly presented to and considered by Congress when the measure was under consideration there, but they are not matters which the courts will consider in a proceeding attacking the validity of that legislation. It is shown by the bill that all the matters and things presented in support of the allegation that said act is invalid were as a matter of fact brought to the attention of Congress and urged against the proposed legislation while it was under consideration there. The agreement was acted upon by the Indians in 1892, but was not acted upon by Congress until 1900. There is no room, in view of these facts, to say that the action finally taken was hasty and ill-considered. After deliberate consideration the Congress concluded they had authority to enact that law, and the courts will be very reluctant, upon the same facts and with no new element presented, to say that the coordinate branch of the Government was wrong. The subject-matter here is one coming clearly within the scope of Congressional action, and, as a matter of fact, the allegations of the bill go only to the expediency of the measure or the means used to procure the Indians' assent to the agreement which forms the basis upon which Congress acted. These were matters for the sole and exclusive con-

sideration of the legislative body. The courts have no concern with them, and will not inquire into them.

The position taken by this court as to its duty in such cases is clearly stated by a passage in the decision in *Luther* v. *Borden* (7 How., 1, 47) and quoted in *Taylor and Marshall* v. *Beckham* (178 U. S., 548, 580), as follows:

> The high power has been conferred on this court of passing judgment upon the acts of the State sovereignties and of the legislative and executive branches of the Federal Government, and of determining whether they are beyond the limits of power marked out for them respectively by the Constitution of the United States. This tribunal, therefore, should be the last to overstep the boundaries which limit its own jurisdiction. And while it should always be ready to meet any question confided to it by the Constitution, it is equally its duty not to pass beyond its appropriate sphere of action, and to take care not to involve itself in discussions which properly belong to other forums.

It is respectfully submitted that a consideration of the questions presented here will involve this court in a discussion properly belonging to the legislative branch of the Government, and which has been held there and the questions involved decided. Upon these grounds alone the decree below should be affirmed.

THE INDIANS ARE WARDS OF THE UNITED STATES AND AS SUCH ARE UNDER THE CARE AND CONTROL OF THE POLITICAL BRANCH OF THE GOVERNMENT.

Section 441, Revised Statutes of the United States, provides:

> The Secretary of the Interior is charged with the supervision of public business relating to the following subjects:
>
> * * * * *
>
> Third. The Indians.
>
> * * * * *

Section 463 reads:

> The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations.

In the early history of the country the Indian tribes were recognized as independent powers to the extent that treaties were negotiated with them. After a long trial it became evident that this manner of dealing with them was not suited to the changing conditions, and was wholly inadequate to secure the proper administration of Indian affairs. A new policy, that of governing them by acts of Congress, was determined upon and announced by the act of March 3, 1871 (16 Stat., 544, 566), which contained a provision, afterwards carried into the Revised Statutes as section 2079, as follows:

> *Provided*, That hereafter no Indian nation or tribe within the territory of the United States

> shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty: *Provided further*, That nothing herein contained shall be construed to invalidate or impair the obligation of any treaty heretofore lawfully made and ratified with any such Indian nation or tribe.

The authority of Congress to prescribe this manner of dealing with the affairs of the Indians has never been seriously questioned and the legislation has been frequently referred to by this court without any intimation of a doubt as to the power of Congress in the premises. See *United States* v. *Kagama* (118 U. S., 375, 382); *Choctaw Nation* v. *United States* (119 U. S., 1, 27); *Cherokee Nation* v. *Southern Kansas R. R. Co.* (135 U. S., 641, 655); *Stephens* v. *Cherokee Nation* (174 U. S., 445, 483).

Even while the political branch of the Government was according to these nations and tribes that degree of recognition as independent peoples involved in the practice of negotiating treaties with them, the courts had begun that long line of decisions which has definitely declared their status as that of dependent communities, subject in all matters relating to their government, civilization, and support to the paternal supervision and control of the United States. In the earlier decisions they were recognized as having some attributes of distinct political communities, but even then it was declared that they lacked many essential attributes of independent nations. In *Johnson* v.

McIntosh (8 Wheaton, 543), decided in 1823, after pointing out that the European powers had agreed that discovery gave title to the country by whose subjects or authority it was made, and gave the exclusive right to extinguish the Indian title of occupancy either by purchase or by conquest, it is said (p. 591):

> However extravagant the pretension of converting the discovery of an inhabited country into conquest may appear, if the principle has been asserted in the first instance and afterwards sustained; if a country has been acquired and held under it; if the property of the great mass of the community originates in it, it becomes the law of the land and can not be questioned. So, too, with respect to the concomitant principle that the Indian inhabitants are to be considered merely as occupants, to be protected, indeed, while in peace, in the possession of their lands, but to be deemed incapable of transferring the absolute title to others. However this restriction may be opposed to natural right and to the usages of civilized nations, yet if it be indispensable to that system under which the country has been settled, and be adapted to the actual condition of the two people, it may perhaps be supported by reason, and certainly can not be rejected by courts of justice.

In other decisions they are spoken of as dependent nations in a state of pupilage. In *Cherokee Nation* v. *Georgia* (5 Peters, 1–17) Chief Justice Marshall, after concluding that they could not with accuracy be denominated foreign nations, describes their status in the following language:

* * * They may, more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupilage; their relation to the United States resembles that of a ward to his guardian. They look to our Government for protection; rely upon its kindness and its power; appeal to it for relief to their wants, and address the President as their Great Father. They and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and dominion of the United States that any attempt to acquire their lands or to form a political connection with them would be considered by all as an invasion of our territory and an act of hostility.

With the increasing white population the Indians were pushed farther to the west, and the lands left for their occupancy constantly became less in extent. This condition of affairs brought them into closer contact with the whites. It was demonstrated that the Indian was absolutely incapable of protecting himself in his new surroundings or of determining what was for his advantage. The usual result which follows in the meeting of two opposing forces occurred here, and the weaker had to give way to the stronger. To afford the Indian that protection which the laws of humanity demanded should be given him, and to prevent as far as possible the evil consequences to both parties which

would necessarily flow from the clash between civilization and savageism, it was necessary that the Government should intervene and assume complete control over the Indians. The condition of affairs and the necessities arising out of that condition are graphically set forth by Justice Miller, speaking for the court, in *United States* v. *Kagama* (118 U. S., 375, 383–384), where it is said:

> * * * These Indian tribes *are* the wards of the nation. They are communities *dependent* on the United States. Dependent largely for their daily food. Dependent for their political rights. They owe no allegiance to the States and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this court, whenever the question has arisen.
>
> * * * * *
>
> The power of the General Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection, as well as to the safety of those among whom they dwell. It must exist in that Government, because it never has existed anywhere else, because the theater of its exercise is within the geographic limits of the

United States, because it has never been denied, and because it alone can enforce its laws on all the tribes.

The relationship between the United States and the Indian tribes is very clearly stated, and the power of Congress to control them by legislative enactment is distinctly asserted in *Choctaw Nation* v. *United States* (119 U. S., 1, 27), where it was said:

> In reviewing the controversy between the parties presented by this record it is important and necessary to consider and dispose of some preliminary questions. The first relates to the character of the parties and the nature of the relation they sustain to each other. The United States is a sovereign nation, not suable in any court except by its own consent and upon such terms and conditions as may accompany that consent, and is not subject to any municipal law. Its government is limited only by its own Constitution, and the nation is subject to no law but the law of nations. On the other hand, the Choctaw Nation falls within the description in the terms of our Constitution, not of an independent State or sovereign nation, but of an Indian tribe. As such, it stands in a peculiar relation to the United States. It was capable, under the terms of the Constitution, of entering into treaty relations with the Government of the United States, although, from the nature of the case, subject to the power and authority of the laws of the United States when Congress should choose, as it did determine in the act of March 3, 1871, embodied in section 2079 of the Revised Statutes, to exert its legislative power.

Counsel for appellants assert that the only change effected by this act of March 3, 1871, was as to the manner of ratification by the United States. This position is not sustained by the language used. The words import a change in the system of treating with and governing the Indian tribes—the inauguration of a new policy. Speaking of this act this court has said: "Congress has determined upon a new departure—to govern them by acts of Congress" (*United States* v. *Kagama*, 118 U. S., 375, 382). Again, the Indians are "subject to the power and authority of the laws of the United States when Congress should choose, as it did determine in the act of March 3, 1871, embodied in section 2079 of the Revised Statutes, to exert its legislative power" (*Choctaw Nation* v. *United States*, 119 U. S., 1, 27); and again, "the policy of the Government, however, in dealing with the Indian nations was definitely expressed in a proviso inserted in the Indian appropriation act of March 3, 1871" (*Stephens* v. *Cherokee Nation*, 174 U. S., 445, 483).

That Congress may have chosen in certain instances since then to authorize the negotiation of agreements with Indians does not in any way modify or detract from the force and effect of said act. The failure of Congress to exercise any legislative power vested in that body or to exercise it in any specified manner does not destroy the power or foreclose resort to the specified manner when occasion arises for its use. *Chicago, Burlington and Quincy Railroad Company* v. *Iowa* (94 U. S., 155, 162).

While sentimentality may characterize the exercise of absolute authority over the affairs of the Indians as an arrogation of power because of might, yet the exigencies of the situation demanded its assumption and results have justified it. The principle has been so firmly established that its existence must be recognized as no longer subject to question.

The view of the subject taken by the executive branch of the Government is shown in a recent veto message of President McKinley, who approved the legislation here in question (see Congressional Record, vol. 33, part 6, p. 5132, Fifty-sixth Congress, first session), where it is said:

> *While the Indians are the wards of the Government and must submit to that which is deemed for their best interests by the sovereign guardian*, they should, nevertheless, be dealt with in a manner calculated to give them confidence in the Government and to assist them in passing through the inevitable transition to a state of civilization and full citizenship.

Nor is the power of the General Government over the persons and property of its Indian wards one which can be surrendered or contracted away. In *Stone* v. *Mississippi* (101 U. S., 814, 820) it is said:

> But the power of governing is a trust committed by the people to the Government, no part of which can be granted away. The people in their sovereign capacity have established their agencies for the preservation of the public health and the public morals and the protection of public and private rights. These several

> agencies can govern according to their discretion, if within the scope of their general authority, while in power; but they can not give away or sell the discretion of those that are to come after them in respect to matters the government of which, from the very nature of things, must "vary with varying circumstances."

THE MAKING OF TREATIES A POLITICAL FUNCTION.

The scope of the jurisdiction of the several departments of the Federal Government is clearly defined, and one may not interfere with another acting in its proper sphere. The relations between this country and other governments or peoples are to be determined by treaties, agreements, or laws, and the political branch has full authority to determine, declare, or agree what these relations shall be. The proposition that the political functions of the Government shall be performed free from control or interference by the judiciary is so elementary in character and its recognition so essential to the stability of our present system that a mere statement of it seems to be sufficient.

In the case of *The Amiable Isabella* (6 Wheat., 1, 71, 72) the court had under consideration the Spanish treaty of 1795, which provided that in certain cases passports should be made out according to the form annexed thereto. As a matter of fact, no form had been annexed to the treaty. The court was asked to pass upon the form used in that case, but refused to do so upon the ground that such action would be adding to the treaty; and in this connection Justice Story said (pp. 71, 72):

* * * In the first place, this court does not possess any treaty-making power. That power belongs by the Constitution to another department of the Government, and to alter, amend, or add to any treaty by inserting any clause, whether small or great, important or trivial, would be on our part a usurpation of power and not an exercise of judicial functions. It would be to make and not to construe a treaty. Neither can this court supply a *casus omissus* in a treaty any more than in a law. We are to find out the intention of the parties by just rules of interpretation applied to the subject-matter, and, having found that, our duty is to follow it so far as it goes and to stop where that stops, whatever may be the imperfections or difficulties which it leaves behind. * * * In the next place, this court is bound to give effect to the stipulations of the treaty in the manner and to the extent which the parties have declared, and not otherwise. We are not at liberty to dispense with any of the conditions or requirements of the treaty or to take away any qualification or integral part of any stipulation upon any notion of equity or general convenience or substantial justice. The terms which the parties have chosen to fix, the forms which they have prescribed, and the circumstances under which they are to have operation rest in the exclusive discretion of the contracting parties, and whether they belong to the essence or the modal parts of the treaty, equally give the rule to the judicial tribunals.

In *Doe* v. *Braden* (16 How., 635) the court had under consideration the treaty with Spain by which

Florida was ceded to the United States. In the ratification of this treaty, signed by the King of Spain, it was declared that certain grants theretofore made by that country were thereby annulled. It was contended that the power to annul these grants did not rest in the King, and that if it existed anywhere in the Spanish Government it resided in the Cortes, and that consequently the grants had never been effectually annulled. The court refused to open that question, and in the course of the opinion said (p. 656):

> But these are political questions and not judicial. They belong exclusively to the political department of the Government.
>
> By the Constitution of the United States the President has the power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur. And he is authorized to appoint ambassadors, other public ministers, and consuls, and to receive them from foreign nations, and is thereby enabled to obtain accurate information of the political condition of the nation with which he treats, who exercises over it the powers of sovereignty and under what limitations, and how far the party who ratifies the treaty is authorized, by its form of government, to bind the nation and persons and things within its territory and dominion by treaty stipulations. And the Constitution declares that all treaties made under the authority of the United States shall be the supreme law of the land.
>
> The treaty is therefore a law made by the proper authority, and the courts of justice have

> no right to annul or disregard any of the provisions unless they violate the Constitution of the United States. It is their duty to interpret it and administer it according to its terms. And it would be impossible for the executive department of the Government to conduct our foreign relations with any advantage to the country and fulfill the duties which the Constitution has imposed upon it if every court in the country was authorized to inquire and decide whether the person who ratified the treaty on behalf of a foreign nation had the power, by its constitution and laws, to make the engagements into which he entered.

The proper department of the Government having once determined that a treaty has been properly executed, it becomes the supreme law of the land, and the courts can not inquire into any alleged informality in its execution. In another part of the opinion in *Doe* v. *Braden* the court used the following language (p. 657):

> * * * It was for the President and Senate to determine whether the King, by the constitution and laws of Spain, was authorized to make this stipulation and to ratify a treaty containing it. They have recognized his power by accepting this stipulation as a part of the compact and ratifying the treaty which contains it. The constituted and legitimate authority of the United States, therefore, has acquired and received this land as public property. In that character it became a part of the United States, and subject to and governed by their laws. And as the treaty is by the Constitution

> the supreme law, and that law declared it public domain when it came to the possession of the United States, the courts of justice are bound so to regard it and treat it, and can not sanction any title not derived from the United States.

The same rule has been applied to treaties with Indian tribes. In *United States* v. *Brooks* (10 How., 442) the suit was brought in pursuance of a joint resolution of Congress directing the institution of such legal proceedings as might be necessary "to vindicate the right of the United States to Rush Island, which is alleged to have been improperly included in the limits of the lands ceded by the Caddo Indians to the United States by the treaty of the 1st of July, 1835, and reserved by said treaty in favor of certain persons named Grappe." By that treaty, which was negotiated by Jehul Brooks as commissioner for the United States, the Indians ceded certain lands described by metes and bounds, and in a supplemental article it was provided that a tract, to contain 4 square leagues, should be taken out of the lands so ceded and conferred upon Grappe and his sons. Afterwards it was represented that the land so reserved had never been a part of the Caddo lands, and that Brooks, the commissioner for the United States, and who claimed the land by purchase from Grappe, had fraudulently procured it to be included in the tract ceded by the Indians. The court held that the treaty passed the title to the tract to Grappe as fully as a patent would have done; that Brooks, being

the alienee of Grappe, could hold it against any claim of the United States, and said (p. 459):

> We have nothing to do, in our consideration of the case, with the conjectural intimations, which were made in the argument of it, concerning the influences which were used to secure the reservation or the designs of the Commissioner in having it done.

The case of *Fellows* v. *Blacksmith* (19 How., 366) involved a treaty between the United States and certain Indians residing in the State of New York, by which their lands in New York were to be sold and the Indians were to be removed to other lands in the West to be provided for them. A contention was made there, like the one here, that the treaty had not been properly negotiated in that one of the bands was not represented in the negotiations and therefore never assented to the terms of the treaty. In speaking of this the court said (p. 372):

> An objection was taken on the argument to the validity of the treaty on the ground that the Tonawanda band of the Seneca Indians were not represented by the chiefs and headmen of the band in the negotiations and execution of it. But the answer to this is that the treaty, after executed and ratified by the proper authorities of the Government, becomes the supreme law of the land, and the courts can no more go behind it for the purpose of annulling its effect and operation than they can behind an act of Congress. (1 Cranch, 103; 6 Pet., 735; 10 How., 442; 2 Pet., 307, 309, 314; 3 Story Const. Law, 695.)

If the court could not inquire into the alleged irregularity in that case, much less will any court inquire into the alleged irregularity in this case, where it appears that the contention now made, that the requisite number of Indians did not sign the agreement, was presented to Congress before the passage of the ratifying act. It must be presumed that this contention was investigated, and that the investigation satisfied Congress that it was without foundation in fact. Whatever opinion this court may entertain as to the correctness of the conclusion reached is wholly unimportant. The judiciary has no power to make the inquiry and substitute its judgment for that of Congress.

It has been definitely settled that there is no authority in the courts created by the Constitution, whose jurisdiction can neither be enlarged or diminished by legislative authority, to consider and determine whether a treaty or act of Congress has been procured by fraud or duress. While special tribunals created by act of Congress may be clothed with extrajudicial powers, yet it has been held of acts which from their wording seem to confer the greatest possible latitude of inquiry that Congress did not thereby submit the good faith of its action or the action of the Government to judicial decision. The case of *United States* v. *Old Settlers* (148 U. S., 427) was instituted under an act of Congress of January 25, 1889 (25 Stat., 694), conferring upon the Court of Claims jurisdiction to try the cause and determine what sum of money, if any, was due the Indians from the United States

under any treaty or act of Congress, and declaring it to be "the intention of this act to allow the said Court of Claims unrestricted latitude in adjusting and determining the said claim, so that the rights, legal and equitable, both of the United States and of said Indians, may be fully considered and determined, and to try and determine all questions that may arise in such cause on behalf of either party thereto and render final judgment thereon." In the petition in that case it was alleged that certain lands had been conveyed to the Western Cherokees, known as the Old Settlers, by the United States; that subsequently a part of said lands was, by force and fraud upon the part of the United States, given to the Eastern Cherokees, and (p. 430):

> * * * that from that time and continually thereafter the Western Cherokees protested against and resisted this invasion of their rights until in 1846, when, acting under duress of life, liberty, and property, advantage being also taken by the United States of the fiduciary relations existing toward the Western Cherokees, and also of the condition of extreme impoverishment, destitution, and want to which the Western Cherokees had been reduced by the United States, they were forced to make and enter into an agreement with the United States fraudulent in character, by the terms of which the consideration they were to receive was grossly inadequate to compensate them for their right to and interest in the lands of which they had been unjustly deprived by the United

> States, and for the property destroyed and lost to them through the wrongful acts of the United States and its default to comply with its treaty obligations. * * *

The Court of Claims' view of the jurisdiction so conferred upon it is stated by this court as follows (p. 466):

> The Court of Claims declined to go behind the treaty of 1846, upon the ground that it was not within the province of a court, either of law or equity, to determine that a treaty or an act of Congress had been procured by duress or fraud, and declare it inoperative for that reason. (*Fletcher* v. *Peck*, 6 Cranch, 87, 130; *Ex parte McCardle*, 7 Wall., 506, 514; *People* v. *Draper*, 15 N. Y., 545, 555; *Railroad Company* v. *Cooper*, 33 Penn. St., 278; *Wright* v. *Defrees*, 8 Indiana, 302.)
>
> And while it was conceded that Congress might confer upon that court extrajudicial powers, yet the court was of opinion that this could not be held to have been done by the act authorizing the institution of this suit, since it was therein provided that whatever judgment might be rendered, whether for the complainants or defendants, might be appealed to the Supreme Court, whose jurisdiction, as defined by the Constitution, was strictly judicial, and could neither be enlarged nor diminished by legislative authority. (*Gordon* v. *United States*, 2 Wall., 561; Taney, C. J., 117 U. S., 697, Appx.; *In re Sanborn*, *ante*, 222.)

The case of *United States* v. *Arredondo* (6 Peters, 691) was cited by petitioners there in support of the

contention that under the act of jurisdiction the treaty of 1846 was to be considered as a contract between private parties. A similar contention is in effect made here. This court, after stating what was involved and decided in the Arredondo case, said (468):

> It will be perceived that that decision is not authority for the proposition that a court may be clothed with power to annul a treaty on the ground of fraud or duress in its execution, nor does any such question arise in the case before us. There is nothing in the jurisdictional act of February 25, 1889, inconsistent with the treaty of 1846 (or any other), and nothing to indicate that Congress attempted by that act to authorize the courts to proceed in disregard thereof. Unquestionably a treaty may be modified or abrogated by an act of Congress, but the power to make and unmake is essentially political and not judicial, and the presumption is wholly inadmissible that Congress sought in this instance to submit the good faith of its own action or the action of the Government to judicial decision, by authorizing the stipulations in question to be overthrown upon an inquiry of the character suggested, and the act does not in the least degree justify any such inference.

The case of *United States* v. *Choctaw Nation* (179 U. S., 494) was instituted under the provisions of the act of March 2, 1895 (28 Stat., 876, 898), conferring upon the Court of Claims jurisdiction to hear and determine the matter, the intention being, as therein expressed, "to allow said Court of Claims jurisdiction

so that the rights, legal and equitable, of the United States and the Choctaw and Chickasaw nations and the Wichita and affiliated bands of Indians in the premises shall be fully considered and determined, and to try and determine all questions that may arise on behalf of either party in the hearing of said claim." In speaking of the effect of this act and defining the extent of jurisdiction thereby conferred, the court, speaking through Justice Harlan, said (p. 532):

> Congress did not intend, when passing the act under which this litigation was inaugurated, to invest the Court of Claims or this court with authority to determine whether the United States had, in its treaty with the Indians, violated the principles of fair dealing.

The language in the jurisdictional acts involved in the cases just cited is apparently as broad as human ingenuity could devise. It certainly embraces every phase of every question that could arise in connection with the claim involved. It is sufficiently comprehensive to make the jurisdiction conferred thereby coextensive with the authority of Congress to grant jurisdiction to the courts. If, therefore, that language failed to invest the Court of Claims with authority to inquire whether a treaty had been procured by fraud, duress, or unfair dealings, the supreme court of the District of Columbia had no authority under the act establishing it and defining its jurisdiction to inquire in this case whether the agreement here was properly negotiated.

The act of 1871, declaring that dealings with the Indian tribes should no longer be conducted by way of treaties, did not make those dealings any less political in character or take them out of the exclusive control of the political branch of the Government. Whether those dealings be by way of treaty or, as in this case, by way of agreement, the declaration of Congress in the premises and its action thereon is conclusive. The allegation in this bill that the requisite number of members of the Comanche, Kiowa, and Apache tribes of Indians never assented to the cession of the lands in question does not present any question which may be inquired into by the courts, and must, therefore, be disregarded. With this allegation, which forms the very basis of complainants' grievance, eliminated, there is nothing remaining to support their bill.

AN ACT OF CONGRESS MAY SUPERSEDE A TREATY.

The contention, so persistently urged, that these Indians have not ceded the lands in question in accordance with the terms of the treaty of 1868, by which such lands were set apart for the use and occupation of the Indians, might very properly be dismissed with the statement that the decision of the political branch of the Government that they have been properly ceded is conclusive. The contention is without merit, however, upon another theory A later act of Congress supersedes the provisions of a prior treaty in conflict therewith. This proposition is very fully discussed in the *Head Money cases* (112 U. S., 580, 597–599); and the reasons for the rule and the principles upon which

it is found are there set forth. At the conclusion of the discussion, the court said:

> In short, we are of opinion that, so far as a treaty made by the United States with any foreign nation can become the subject of judicial cognizance in the courts of this country, it is subject to such acts as Congress may pass for its enforcement, modification, or repeal.

Many other cases announce the same rule, among which are *Whitney* v. *Robertson* (124 U. S., 190, 194); *Botiller* v. *Dominguez* (130 U. S., 238, 247); *The Chinese Exclusion case* (130 U. S., 581, 602); *Horner* v. *United States* (143 U. S., 570, 578); *Barker* v. *Harvey* (181 U. S., 481, 488).

The first case where the doctrine was applied to Indian treaties was *The Cherokee Tobacco* (11 Wall., 616, 621). A law had been passed by Congress declaring that the internal-revenue laws should be held to extend to the taxed articles produced anywhere within the exterior boundaries of the United States. It was claimed that this provision did not have operation in the Cherokee Nation because in conflict with the provisions of the prior treaty of 1866. The court recognized the fact that the repugnancy was clear and that the two provisions could not stand together, but held that the earlier treaty must yield to the later law. After referring to the cases of *Foster* v. *Neilson* (2 Peters, 314), *Taylor* v. *Morton* (2 Curtis, 454), and *The Clinton Bridge* (1 Walworth, 155), as supporting the general proposition that a treaty may supersede a prior

act of Congress and that an act of Congress may supersede a prior treaty, the court said:

> * * * In the cases referred to these principles were applied to treaties with foreign nations. Treaties with Indian nations within the jurisdiction of the United States, whatever considerations of humanity and good faith may be involved and require their faithful observance, can not be more obligatory. They have no higher sanctity, and no greater inviolability or immunity from legislative invasion can be claimed for them. The consequences in all such cases give rise to questions which must be met by the political department of the Government. They are beyond the sphere of judicial cognizance. In the case under consideration the act of Congress must prevail as if the treaty were not an element to be considered. If a wrong has been done, the power of redress is with Congress, not with the judiciary, and that body, upon being applied to, it is to be presumed, will promptly give the proper relief.

The principle was applied in *Ward* v. *Race Horse* (163 U. S., 504, 511), where the provisions of the act of Congress admitting Wyoming into the Union were found to be in conflict with a prior treaty assuring to the Bannock tribe of Indians the right to hunt upon unoccupied lands of the United States.

It was also recognized in *Thomas* v. *Gay* (169 U. S., 264, 270–271). There a treaty with the Cherokee Indians had provided that their lands should be exempt from taxation and from inclusion within the

limits of any State or Territory. Afterwards a part of these lands passed to the Osage and Kansas Indians and was subsequently, by act of Congress, included within the geographical limits of the Territory of Oklahoma. The right of the Territory to collect taxes upon cattle grazing on said lands was contested. Upon this phase of the case it was said:

> Whether, without express stipulation to that effect, the right granted by treaty to the Cherokee Nation to be exempt as to their lands from inclusion within the limits of any Territory or State passed with the grant of a portion of such lands to the Osage and Kansas Indians we need not consider, because, even if such were the law, it is conceded that the United States have, by the act of May 2, 1890 (26 Stat., 81), creating the Territory of Oklahoma, included these Osage and Kansas Indian lands within the geographical limits of said Territory.
>
> It is well settled that an act of Congress may supersede a prior treaty, and that any questions that may arise are beyond the sphere of judicial cognizance and must be met by the political department of the Government.

The most notable instance in which Congress has exercised the authority to administer the affairs of Indian tribes by direct legislative enactment is found in the recent legislation respecting the Five Civilized Tribes in Indian Territory. By treaties entered into at various times these tribes had been removed from the East and located upon lands for which patents had been given them. The United States had in those

treaties assured the Indians the free and unrestricted control of the lands thus given them, with the single exception that they should not be sold except to the United States. The Indians were to be protected from intrusion by outsiders, were to have the right of self-government, and entire freedom from interference in their internal affairs. Time demonstrated that these, the most advanced of all Indians within the boundaries of the United States, were, under the very favorable conditions surrounding the experiment, wholly incapable of properly conducting their affairs The experiment proved a miserable failure. To rescue them from the deplorable condition resulting from their demonstrated inability to manage their business, either governmental or financial, Congress interposed its authority. Having failed to accomplish any result from an effort to arrange the matter by negotiations with the Indians, the act of June 28, 1898 (30 Stat., 495), was passed. Theretofore a commission had been provided to ascertain and make rolls of the citizens of the various tribes.

The act of 1898 provided that upon completion of the rolls of any tribe that commission should proceed to allot the exclusive use and occupancy of the surface of all the lands of such tribe among the citizens thereof, such allotments to be confirmed by the Secretary of the Interior; that the minerals in their lands should be leased by the Secretary of the Interior, who was given authority to fix the rate of all royalties to be paid by lessees; that town sites should be surveyed, laid

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CONTROL OF INDIAN AFFAIRS BY DIRECT LEGISLATIVE ENACTMENT—OBJECTIONS URGED TO LEGISLATION HERE IN QUESTION ARE NOT TENABLE.

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out, and platted and the lots therein appraised and sold under the supervision of the Secretary of the Interior; that all leases of agricultural or grazing lands made by the tribe or any member thereof prior to January 1, 1898, should be absolutely void, and all made after that date should terminate April 1, 1899; that the laws of the various tribes should not after the date of said act be enforced by the courts of the United States in Indian Territory, and that on July 1, 1898, all tribal courts in Indian Territory should be abolished. In short, the whole system founded upon the prior treaties was superseded by the provisions of this act.

It is difficult to conceive of a case involving more radical action, or that would present more clearly the question as to the authority of Congress in such matters. The question as to the right of Congress to take this action and, consequently, as to the constitutionality of that legislation, was presented to this court in the case of *Stephens* v. *Cherokee Nation* (174 U. S., 445). The court there fully sustained the power of Congress in the premises and held "the entire legislation constitutional." The contention that this act was in conflict with treaties made prior to the passage of the act of March 3, 1871 (*supra*), incorporated into the Revised Statutes as section 2079, was disposed of as follows (p. 483):

> The treaties referred to in argument were all made and ratified prior to March 3, 1871, but it is "well settled that an act of Congress may supersede a prior treaty, and that any questions that may arise are beyond the sphere of judicial

> cognizance and must be met by the political department of the Government."

After quoting from *Cherokee Nation* v. *Southern Kansas Ry. Co.* (135 U. S., 641, 653), an extract wherein several authorities are cited to show the status of the Indian tribes as wards and the authority of Congress to exert its legislative power over them, it was said (p. 486):

> Such being the position occupied by these tribes (and it has often been availed of to their advantage), and the power of Congress in the premises having the plenitude thus indicated, we are unable to perceive that the legislation in question is in contravention of the Constitution.

The validity of the act of June 28, 1898, was very carefully considered and fully sustained by the United States court of appeals for the Indian Territory in the case of *Tuttle* v. *Moore* (64 Southwestern Reporter, 585). Especial attention is invited to this opinion because it comes from a court which is almost continually engaged in the consideration of questions affecting the Indians.

The proposition that the United States has full power and control over the Indians, both as to persons and property, and that this control is to be administered through the political branch of the Government is, we respectfully submit, fully sustained upon principle and by authority. For its acts in such matters the political department is not answerable to any other department of the Government. That this guardianship may not have been always wisely

administered may be true, but the responsibility for any failure in the execution of the trust is with the department charged with the performance of the duties appertaining thereto. To that department, and not to the courts, must resort be had for relief from any injustice done. Whether the agency used be treaty, agreement, or direct legislative enactment, the function is still political in character and not judicial.

It is respectfully submitted that the rules and principles established by the authorities cited when applied to this case demonstrate beyond the possibility of a doubt that the grounds assigned for declaring the act in question unconstitutional are wholly insufficient, and that the complaint can not be sustained. The grounds assigned in the bill are as follows (Record, p. 13):

> *First.* That the said Indians were induced to sign the said treaty by false and fraudulent translations, and that none of those who signed said treaty understood its provisions.
>
> *Second.* That by the provisions of the Medicine Lodge treaty no part or portion of said lands could be ceded or alienated without the consent of three-fourths of the male adult members of said tribes, and that three-fourths of such male adults have never signed said Jerome treaty or any other treaty or agreement by which they ceded or alienated any portion of their said lands.
>
> *Third.* That eight months prior to the time Congress pretended to ratify said Jerome treaty 571 adult male members of said tribes, which were more than three-fourths of such number,

met in general council, with the approval of the Secretary of the Interior and the Indian agent, at Mount Scott, in said reservation, and solemnly repudiated the said treaty and prayed Congress "to cast it out and not accept it as their free act and deed."

Fourth. That in the act of Congress pretending to ratify said Jerome treaty numerous amendments, changing important provisions of said treaty, were made by Congress, and that said treaty was attempted to be put in force without submitting said amendments or the treaty as thus amended to the approval of said Indians.

The first and second reasons present matters to be considered by the legislative body preliminary to action upon the instrument or agreement, but which once considered and acted upon by that body are not the subject of inquiry by the courts. Congress, by accepting and ratifying the agreement, said that no improper means were used to secure its execution by the Indians, and that the proper parties signed it. For the courts to now say that Congress was mistaken and that there was no offer by the Indians which could have been accepted would be to arrogate to themselves the legislative functions of the Government. This court has frequently disclaimed any power or desire to do this and will do so again whenever the occasion arises.

The third reason presents a matter equally within the province of the political branch of the Government to pass upon. This matter, as well as those covered by the first and second reasons, was, according to the

statements of the bill of complaint, urgently presented to Congress and must have been considered by that body. The conclusion reached after that consideration is final and effectually forecloses the courts from inquiry in respect thereof.

Appellants seem to have virtually abandoned these three grounds. They admit in their brief here (par. 56, p. 46) that the courts have no jurisdiction or authority to consider and determine whether a treaty or act of Congress has been procured by fraud or duress, and, again (par. 93, pp. 68–69), that the question whether a treaty was duly executed by the parties authorized thereto is one solely for the political department of the Government to determine.

The fourth reason still presents matters for determination by the legislative body and not by the judiciary. If changes were made as alleged and the Indians were injured thereby, their remedy was to be sought at the hands of the political branch of the Government. Considering this agreement as governed by the same rules that apply to treaties, it is clear that the instrument, in the shape it was finally approved and published by that branch of the Government authorized to make it, must be accepted and recognized by the courts as the law of the land.

Waiving, however, all questions of consent of the Indians, and considering the matter as a direct legislative enactment, its constitutionality must be sustained because all the provisions thereof are clearly within the power of Congress to enact. Let us suppose that the agreement had

been ratified exactly as signed by the Indians and that Congress had subsequently in an entirely separate act made the provisions which are alleged by complainants to have been made in the agreement itself. It will be found that those provisions are such as Congress had full power to provide and enforce. That being so, the question as to the *power* of Congress is eliminated and that of *expediency* alone remains. The courts, as abundantly shown by authorities already cited, will not consider that question in inquiring as to the constitutionality of Congressional action. The bill of complaint purports to set forth the alleged changes with particularity. (Record, pp. 9–11.) The first adds a condition to the cession by the Indians made necessary by, and as a consequence of, the second change.

The second relieves the individual Indian of a requirement to take one half of his allotment in grazing lands, and provides for setting apart, in addition to the individual allotments provided for, of 480,000 acres of grazing lands for use in common by the Indians. No one will seriously question the power of Congress to do these things by subsequent legislation and without any agreement with the Indians. The third change is in Article V of the agreement, and, instead of providing for payment of $500,000 of the consideration for the cession at specified periods of one hundred and twenty days, one year, and two years, makes that amount immediately available to be distributed at such times and in such manner as the Secretary of the Interior shall deem for the best interests of the Indians. This is clearly the proper exercise of

the power vested in Congress to protect and advance the interests of the Indians. It presents a question of *expediency* and not of *power*. The fourth and last alleged change in the agreement consists in striking out the names of two parties who were by the original instrument to be allowed allotments of land the same as members of the tribe. A subsequent act of Congress excluding these parties from the benefits of said agreement could not have been assailed by the Indians. It would be open to attack by the excluded parties alone, if by anyone.

If these things could have been done by separate and subsequent legislative enactment, and of this there is no room for doubt, they could be done in the manner adopted in said act of June 6, 1900. No conclusion is possible under the authorities cited or upon any line of argument applicable to the circumstances of the case except that reached by the court of appeals and which is so clearly stated by that court in overruling a motion for reargument, as follows (Record, p. 47):

> We hold that it is not a judicial question of due process of law, to be determined by the courts, but that it is a political question for determination by Congress: and Congress having acted with all the facts before it, including the memorial and protest of the Indians against the act of ratification, that act of ratification is final and conclusive, and the courts have no power or jurisdiction over the subject.

In that statement the court but followed and applied the rule laid down by this court in *Barker* v. *Harvey* (181 U. S., 481, 492), as follows:

It is undoubtedly true that this Government has always recognized the fact that the Indians were its wards, and entitled to be protected as such, and this court has uniformly construed all legislation in the light of this recognized obligation. But the obligation is one which rests upon the political department of the Government, and this court has never assumed, in the absence of Congressional action, to determine what would have been appropriate legislation, or to decide the claims of the Indians as though such legislation had been had. Our attention has been called to no legislation by Congress having special reference to these particular Indians. By the act creating the land commission the commissioners were required (sec. 16) "to ascertain and report to the Secretary of the Interior the tenure by which the mission lands are held, and those held by civilized Indians, and those who are engaged in agriculture or labor of any kind, and also those which are occupied and cultivated by Pueblos or Rancheros Indians." It is to be assumed that the commissioners performed that duty, and that Congress, in the discharge of its obligation to the Indians, did all that it deemed necessary, and as no action has been shown in reference to these particular Indians, or their claims to these lands, it is fairly to be deduced that Congress considered that they had no claims which called for special action.

LEGISLATIVE CONTROL OF PROPERTY OF WARDS.

The authority of Congress to control the property of the Indians and to make the disposition of the land oc-

cupied by them directed by said act of June 6, 1900, may be sustained upon another ground. They are the wards of the nation, and the management and care of their property, like that of minors, incompetents, or other persons not *sui juris*, is one of the subjects which the legislature may or may not submit to the courts, as it may deem proper. For a discussion of this matter reference is made to Cooley's Constitutional Limitations, sixth edition, page 117 *et seq*. The question came before this court in *Hoyt* v. *Sprague* (103 U. S., 613). The legislature of Rhode Island authorized the investment of property of certain minors in the shares of a business corporation. The business venture, after some years, failed, and the property of the minors was lost. They, after reaching their majority, sought to recover their original property, alleging, among other things, that the authorization of the investment was not a legislative but a judicial function, and beyond the legislative power.

Of this contention Justice Bradley, speaking for the court, said (pp. 633, 634):

> * * * As already intimated, it can not be doubted that the legislative power extends to the regulation of the investments and the management of minors' estates by their guardians. The legislature certainly might, if it saw fit, pass a general law authorizing a guardian to invest the property of his ward in the capital stock of a corporation engaged in manufacturing, trading, or financial operations, or in a particular class of operations, as banking, insurance, or any other that might be specified.

Usually such authority, if given, would be required to be exercised under the allowance and supervision of a court, but that would be a matter of legislative discretion. That such an authority could be conferred by law there can be no doubt. Analogous powers have been conferred from time immemorial.

* * * * *

The question of the power of a legislature, when not restrained by a specific constitutional provision, to pass special laws has been much mooted in the courts of this country; and it would subserve no useful purpose to go over the whole ground of controversy on this occasion. Suffice it to say, that laws of this character, for the purpose of healing defects, giving relief, aid, and authority in cases beyond the force of existing law, have been frequently passed in almost every State in the Union and have received the sanction not only of this court, but of other courts of high authority. The exercise of this power has been most conspicuous in that class of cases in which the legislature has been called upon to act as *parens patriæ* on behalf of lunatics, minors, and other incapacitated persons. Laws authorizing the sale of the estates of such persons have frequently been passed and have been upheld as fairly within the legislative power. The passage of such laws is not the exercise of judicial power, although by general laws the discretion to pass upon such cases might be confided to the courts. But when it is not confided to the courts the power exercised is of a legislative character, the legislature making a law

> for the particular case. In some modern constitutions the exercise of this power has been prohibited by the legislative department. But where not so prohibited, and where it has never been authoritatively condemned in the jurisprudence of the State, we can not deny to the legislature the right to exercise it in those cases in which it has been accustomed to be exercised, amongst which we think the present case may be fairly reckoned. Such laws are not judgments upon any person's rights, but they confer powers upon the exercise of which judgment may afterwards be given.

Rice v. *Parkman* (16 Mass., 326) was a case where the property of certain minors had been sold under special act of the legislature authorizing the sale. The children after coming of age brought suit against the party claiming under the sale, insisting that the special statute was void. The supreme court of Massachusetts sustained the statute, and in the course of its opinion said:

> This is a power, frequently exercised by the legislature of this State since the adoption of the constitution and by the legislatures of the province and of the colony while under the sovereignty of Great Britain, analogous to the power exercised by the British Parliament on similar subjects time out of mind. Indeed, it seems absolutely necessary for the interest of those who by the general rules of law are incapacitated from disposing of their property that a power should exist somewhere of converting lands into money; for otherwise many

> minors might suffer, although having property, it not being in condition to yield an income. This power must rest in the legislature in this Commonwealth, that body being alone competent to act as the general guardian and protector of those who are disabled to act for themselves.
>
> It was undoubtedly wise to delegate this authority to other bodies, whose sessions are regular and constant and whose structure may enable them more easily to understand the merits of the particular application brought before them, but it does not follow that because the power has been delegated by the legislature to courts of law it is judicial in its character.

The same question was also considered and decided by the Mississippi supreme court in *Louisville, etc., Ry. Co.* v. *Blythe* (30 American State Reports, 599). It was there said (p. 603):

> The doctrine is firmly established by the great weight of American decisions, and sustained by the most cogent and unanswerable reasoning, that special acts of the legislature authorizing or confirming the sale of lands by guardians are constitutional when their object is simply to provide a change of investment, and not to divest the beneficiary of property rights in the absence of special or exceptional constitutional limitations, and that such acts are not judicial, but the proper exercise of legislative power.
>
> Such a power necessarily resides in the legislative department of the Government, as *parens patriæ*, to prescribe such rules and regulations

as may be proper for the management, superintendence, and disposition of the property of infants, lunatics, and persons who are incapable of managing their own affairs.

In *Henderson* v. *Dowd* (116 N. C., 195) it was said:

> This court is of the opinion that the legislature has the power to enact that the plaintiff be appointed guardian, * * * because there is no restriction on such power in the organic law. The policy is not for this court to consider. It is by the authority of the legislature that the duties of the clerk are prescribed and regulated, and if that body can delegate the execution of such duties to the clerk, it must have the power to do the same.

In *Davidson* v. *Johannot* (7 Metcalf, 388) it was said:

> The legislature has power to authorize the guardian of a person *non compos mentis* to sell a part of his ward's estate, and apply the proceeds to discharge incumbrances on other parts thereof.

In *Cochran* v. *Van Surlay* (20 Wend., 365) it was said:

> A private act of the legislature authorizing the sale of the estate of infants for their maintenance and education is within the scope of the legitimate authority of a State legislature. * * * It is clearly * * * within the powers of the legislature as *parens patriæ* to prescribe such rules and regulations as it may deem proper for the superintendence, disposition, and management of the property and effects of infants, lunatics, and other persons who are incapable of managing their own affairs.

In *Wheeler* v. *Smith* (9 How., 55, 77) this court said:

> When this country achieved its independence, the prerogatives of the Crown devolved upon the people of the States. And this power still remains with them, except so far as they have delegated a portion of it to the Federal Government. The sovereign will is made known to us by legislative enactment. And to this we must look in our judicial action, instead of the prerogatives of the Crown. The State, as a sovereign, is the *parens patriæ*.

This statement is referred to with approval in *Fontain* v. *Ravenel* (17 How., 369, 384), and again in *The Late Corporation of the Church of Jesus Christ of Latter-Day Saints* v. *United States* (136 U. S., 1, 57). In this latter case the court emphatically asserted the supreme power of Congress over the Territories, and, after a quotation from *Fontain* v. *Ravenel* (*supra*), in substance the same as that from *Wheeler* v. *Smith* (*supra*), said:

> This prerogative of *parens patriæ* is inherent in the supreme power of every state, whether that power is lodged in a royal person or in the legislature, and has no affinity to those arbitrary powers which are sometimes exerted by irresponsible monarchs, to the great detriment of the people and the destruction of their liberties. On the contrary, it is a most beneficent function, and often necessary to be exercised in the interests of humanity, and for the prevention of injury to those who can not protect themselves. Lord Chancellor Somers, in *Cary* v. *Bertie* (2 Vernon, 333, 342), said: "It is

true, infants are always favored. In this court there are several things which belong to the King as *pater patriæ*, and fall under the care and direction of this court, as charities, infants, idiots, lunatics," etc.

The supreme judicial court of Massachusetts well said, in *Sohier* v. *Mass. Gen. Hospital* (3 Cush., 483, 497): "It is deemed indispensable that there should be a power in the legislature to authorize a sale of the estates of infants, idiots, insane persons, and persons not known, or not in being, who can not act for themselves. The best interest of these persons, and justice to other persons, often require that such sales should be made. It would be attended with incalculable mischiefs, injuries, and losses if estates in which persons are interested who have not capacity to act for themselves, or who can not be certainly ascertained, or are not in being, could under no circumstances be sold and perfect titles effected. But in such cases the legislature, as *parens patriæ*, can disentangle and unfetter the estates by authorizing a sale, taking precaution that the substantial rights of all parties are protected and secured."

These remarks in reference to infants, insane persons, and persons not known or not in being, apply to the beneficiaries of charities, who are often incapable of vindicating their rights, and justly look for protection to the sovereign authority, acting as *parens patriæ*. They show that this beneficent function has not ceased to exist under the change of government from a monarchy to a republic, but that it now resides in the legislative department, ready to be called into exercise whenever required for the purposes

> of justice and right, and is as clearly capable of being exercised in cases of charities as in any other cases whatever.

As pointed out in the authorities hereinbefore referred to, the Indians are wards of the Government. They may not make contracts with respect to their property except in the manner prescribed by Congress and subject to the approval of the Secretary of the Interior. (Secs. 2103, 2127, Revised Statutes; sec. 3, act of February 28, 1891, 26 Stat., 794–5; act of August 15, 1894, 28 Stat., 286, 305; act of June 7, 1897, 30 Stat., 62, 85; act of July 4, 1884, 23 Stat., 76, 94.) They can not act for themselves. They can not protect themselves. They are clearly of that class of persons whose rights and interest must be protected and controlled by the sovereign authority, under whose jurisdiction they come, as *parens patriæ*. They are living within the geographical limits of the United States, not within the jurisdiction or subject to the control of any State, but under the control and jurisdiction of the General Government, whose sovereign will is made known by the enactments of the Congress. Furthermore, these Indians are living within one of the Territories over which Congress has full power of legislation. The extent of the authority of Congress over the Territories and over the people living in them is clearly stated in *National Bank* v. *County of Yankton* (101 U. S., 129, 133), as follows:

> * * * The Territories are but political subdivisions of the outlying dominion of the

United States. Their relation to the General Government is much the same as that which counties bear to the respective States, and Congress may legislate for them as a State does for its municipal organizations. The organic law of a Territory takes the place of a constitution as the fundamental law of the local government. It is obligatory on and binds the Territorial authorities; but Congress is supreme, and for the purposes of this department of its governmental authority has all the powers of the people of the United States, except such as have been expressly or by implication reserved in the prohibitions of the Constitution.

In the organic act of Dakota there was not an express reservation of power in Congress to amend the acts of the Territorial legislature, nor was it necessary. Such a power is an incident of sovereignty, and continues until granted away. Congress may not only abrogate laws of the Territorial legislatures, but it may itself legislate directly for the local government. It may make a void act of the Territorial legislature valid, and a valid act void. In other words, it has full and complete legislative authority over the people of the Territories and all the departments of the Territorial governments. It may do for the Territories what the people, under the Constitution of the United States, may do for the States.

This principle is asserted in many other cases, among which are: *Murphy* v. *Ramsey* (114 U. S., 15, 44); *Mormon Church* v. *United States* (136 U. S., 1, 43–44); *Utter* v. *Franklin* (172 U. S., 416, 420); *De Lima* v.

Bidwell (182 U. S., 1, 196); and *Downes* v. *Bidwell* (182 U. S., 244, 267–269).

The prerogatives of *parens patriæ* as to these Indians is lodged in Congress, and that body has not seen fit to delegate the exercise of these powers to any judicial or other body. In this case whatever interest or claim the Indians had in the land in question was held by them not as individuals, but as a tribe, the wards of the nation, was subject at all times, in the discretion of the guardian, to change or transfer into another kind of property. This is what was done by the proceeding in question if it is to be considered merely as a legislative enactment, stripped of all questions of consent of the wards. Such a law being within the general scope of the power of Congress, the courts can not pronounce it void or inquire whether it accords with their ideas of justice.

However the matter may be viewed, the conclusion that Congress had full power in the premises and that the courts have no jurisdiction to interfere for the purpose of dictating to a coordinate branch of the Government what action it shall take in a matter thus coming within the scope of its jurisdiction is irresistible. The decree of the court below rests upon a firm foundation.

APPELLANTS' OTHER OBJECTIONS TO LEGISLATION UNDER CONSIDERATION ARE WITHOUT FORCE.

Objection is made to said act of June 6, 1900, because of the provision thereof which declares that should any of the lands allotted to said Indians or

opened to settlement under said act contain valuable mineral deposits, such deposits shall be open to location and entry under the mining laws of the United States. That this provision is not injurious to the Indians is believed to be fully shown in an opinion given thereon in the Interior Department. (31 Land Decisions, 125.) Furthermore, it is not alleged that any tract of land claimed by any allottee comes within or is affected by this provision. It is submitted that this objection could be urged only by a party claiming a tract of land affected by said provision.

A further objection is made because of the provision of said act which conferred upon the Court of Claims jurisdiction to hear and determine a claim of the Choctaw and Chickasaw Indians to the lands ceded by said agreement. This provision for a judicial determination of a long-pending controversy is not a matter of which the Indians can complain any more than can any disputant object to legislation which provides for the orderly ending of a controversy by an impartial and competent tribunal upon a full hearing. This provision is of no importance since the decision of this court in *United States* v. *Choctaw, etc., Nations* (179 U. S., 494), which finally denies a like claim of the Choctaws and Chickasaws to the Wichita lands, and therefore effectually disposes of their claim to these lands.

Furthermore, these last two provisions are not parts of the agreement, but are separate and distinct provisions of the ratifying act. If either of them can be said to be unconstitutional, a declaration to that effect

would not in any degree impugn the validity of the agreement and ratifying act as a whole, or as to any other provision.

CONTENTIONS OF APPELLANTS.

It is submitted that the questions of materiality and of controlling influence in the consideration of this matter have been presented in the foregoing pages. It is believed that the propositions upon which the argument of appellants is built have no place in the discussion, at least until the matters hereinbefore presented have been disposed of adversely to our contentions. Neither the correctness of those propositions nor the soundness of the argument based thereon is admitted.

The propositions upon which appellants base their claim to be entitled to the relief sought by this suit are, as presented in their brief, (1) that by the treaty of August 25, 1868 (15 Stat., 581, 585), certain rights in the lands in question were conferred upon the Indians which can not be abrogated or modified except by their consent, in the manner provided in Article XII, and that such consent has not been obtained; (2) that the right of occupancy given them by the treaty is a vested right which can be taken away or disturbed only by due process of law and upon the payment of just compensation; (3) that just compensation has not been allowed; (4) that said act of Congress is not due process of law, that phrase necessarily contemplating a judicial proceeding; (5) that the unconstitutionality of an act of Congress may be tested

by application for injunction to prevent the executive officers of the Government from enforcing its provisions.

CONSENT OF THE INDIANS.

The first proposition is fully discussed in the foregoing pages. Whether the Indians gave their consent to the cession of these lands was a matter for Congress to determine, and which that body did determine in the affirmative. All discussion of that question before the courts was thereby effectually and absolutely foreclosed.

> They [the courts] must assume that legislative discretion has been properly exercised. If evidence was required, it must be supposed that it was before the legislature when the act was passed; and if any special finding was required to warrant the passage of the special act, it would seem that the passage of the act itself might be held to be equivalent to such a finding. (Cooley, Const. Lim., 5th ed., 222; *United States* v. *Des Moines, etc., Co.*, 142 U. S., 510, 544.)

The allegations of the bill of complaint herein could not have the effect of reviving this question or of making it an issue in these proceedings. Even if the fact of consent had not thus been placed without the pale of controversy, still the proposition can not be sustained, because Congress had plenary power in the premises without any such consent.

NATURE OF THE INDIAN RIGHT OF OCCUPANCY.

Here the Indian right of occupancy has been converted into property deemed by the sovereign guard-

ian to be a full equivalent, and therefore the nature of the right of occupancy and the power of Congress to terminate it at will are not necessarily involved in the discussion. However, some consideration of them may be helpful in other directions.

While the right of occupancy of an Indian tribe to lands reserved to it has frequently been referred to by this court, that right has never been judicially defined. Occupancy at common law had a well-defined and understood meaning. When speaking of occupancy as a sacred right which the Indians have in lands reserved to them, this court evidently did not intend to be understood as giving to the word "occupancy" the same meaning it had at common law, for there the right of occupancy of real estate not only involved the right of possession but carried with it the title also.

> Occupancy is the thing by which the *title* was in fact originally gained; every man seizing to his own continued use such spots of ground as he found most agreeable to his own convenience, provided he found them unoccupied by any one else. (Cooley's Blackstone, v. 1, B. 2, p. 8.)
>
> Occupancy is the taking possession of those things which before belonged to nobody. This, as we have seen, is the true ground and foundation of all property, or of holding those things in severalty which by the law of nature, unqualified by that of society, were common to all mankind. (*Ibid.*, 257.)

The right of occupancy of an Indian tribe in lands reserved to them by treaty stipulation resembles an estate at will at common law, with this distinction,

that at common law the interest of the tenant could be determined at the will of either party, while Congress alone can determine the interest in land of an Indian tribe whose only claim is that of occupancy. Blackstone defines such an estate as follows (*ib.*, p. 284):

> An estate at will is where lands and tenements are let by one man to another, to have and to hold at the will of the lessor; and the tenant by force of this lease obtains possession. Such tenant hath no certain indefeasible estate, nothing that can be assigned by him to any other; because the lessor may determine his will and put him out when he pleases.

As the right of a tenant at will to the possession of lands occupied by him was sacred to the extent that the right could not be disturbed or determined by anyone except the landlord, so the right of occupancy guaranteed to an Indian tribe by treaty stipulations is a sacred right in the sense that the courts will not permit it to be infringed or abridged by any party other than the Government, and the Government will not permit it to be interfered with by any State, foreign nation, or other Indian tribe. To this extent the authorities cited and quoted from in appellants' brief go, and no further.

This court has never said that such occupancy is a vested property right, or that it can not be impaired or extinguished by a subsequent act of Congress. On the contrary, in the cases in which the sacredness of this right of occupancy is mentioned are other state-

ments to the effect that the right of occupancy is not a vested property right, and is subject to the control of the political department of the Government, and may be impaired or terminated by act of Congress. The expression upon which so much stress has been laid by counsel for appellants was first used by Justice Baldwin in *Cherokee Nation* v. *Georgia* (5 Peters, 1, 48), in an opinion dissenting from the reasons given by the majority of the court for dismissing the bill in that case. A majority of the court held that an Indian tribe was a domestic dependent nation, saying (p. 17):

> They may, more correctly perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian.

In his opinion concurring in the conclusion reached, but upon very different grounds, Justice Baldwin said (p. 48):

> Indians have rights of occupancy to their lands as sacred as the fee simple, absolute title of the whites, but they are only rights of occupancy, incapable of alienation or being held by any other than common right, without permission from the Government.

He, in the same connection, proceeded to show that this right in the Indians is not repugnant to a conveyance of the fee, and "that the ultimate absolute fee,

jurisdiction and sovereignty was in the Government, subject only to such rights."

In *Mitchell* v. *United States* (9 Peters, 716) the expression occurs, and also the following (pp. 745, 746):

> Subject to this right of possession, the ultimate fee was in the Crown and its grantees, which could be granted by the Crown or colonial legislature while the lands remained in the possession of the Indians, though possession could not be taken without their consent.

That case involved an entirely different principle from that which is here contended for by appellants. The lands in controversy there were situated in Florida, a former Spanish possession. Mitchell claimed the lands through title derived from an Indian tribe who, while Florida was under Spanish control, had transferred them to Mitchell's grantors, which transfer was approved by the Spanish authorities. The laws of Spain recognized the right of Indian tribes to sell and convey lands occupied by them. The questions involved were: (1) Whether, under the laws of Spain, a perfect title to the lands had passed to Mitchell's grantors; and (2) if so, whether such transfer was protected by the terms of the treaty ceding Florida to the United States. Both questions were decided in favor of Mitchell. In the course of the opinion Justice Baldwin says (p. 752):

> But Spain did not consider the Indian right to be that of mere occupancy and perpetual possession, but a right of property in the lands they held under the guarantee of treaties, which

> were so highly respected that in the establishment of a military post by a royal order the site thereof was either purchased from the Indians or occupied with their permission, as that of St. Mark's.

And again (p. 758):

> The Indian right to the lands as property was not merely of possession, that of alienation was concomitant; both were equally secured, protected, and guaranteed by Great Britain and Spain, subject only to ratification and confirmation by the license, charter, or deed from the governor representing the King.

United States v. *Cook* (19 Wall., 591) involved the question whether an Indian tribe having the ordinary Indian right of occupancy could lawfully cut or authorize to be cut timber from the land, and the court held that the Indians had no title to the lands and their right of occupancy gave them no right to cut and sell therefrom the timber which belonged with the fee to the United States. This character of right or claim falls far short of meeting the definition of a vested right.

The question involved in *Leavenworth, etc., R. R. Co.* v. *United States* (92 U. S., 733), cited and relied on by appellants, was not as to the power of Congress to grant lands previously reserved for occupancy by an Indian tribe, but whether the act of Congress under consideration, which was general in its terms, and which granted to the State of Kansas certain lands to aid in the construction of a railroad, should be construed to include land which had been previously

reserved to an Indian tribe under a treaty with them. It was held that the language of the act was not sufficiently specific to show that Congress intended to grant lands included in the Indian reservation, but it is clearly indicated that if specific words had been used in the act evidencing such an intention on the part of Congress such lands would have passed under the grant and the right of occupancy by the Indians would have ended. As hereinafter shown it was so expressly held in *M. K. and T. Ry. Co.* v. *Roberts* and *Spalding* v. *Chandler*. A claim having the force and effect of a vested property right would effectually have prevented any other disposition of the land by Congress. In that case, however, Justice Field filed a dissenting opinion, concurred in by Justices Swayne and Strong, holding that the act in question did include lands within the Indian reservation. He says (p. 754):

> The fee of the land was in the United States, with the right of occupation under the treaty in the Indians. Until this right was relinquished the occupancy could not be disturbed by any power except that of the United States.

In *Beecher* v. *Wetherby* (95 U. S., 517) the doctrine is distinctly recognized that the right of occupancy secured to an Indian tribe by a treaty can be terminated and extinguished by Congress. It is there said (p. 525):

> But the right which the Indians held was only that of occupancy. The fee was in the United States, subject to that right, and could be transferred by them whenever they chose.

> The grantee, it is true, would take only the naked fee, and could not disturb the occupancy of the Indians; that occupancy could only be interfered with or determined by the United States.

These cases, and especially the last two, instead of sustaining the position of counsel for appellants, strongly support the contention of the appellee, that Congress may terminate or extinguish the Indian right of occupancy as to all or any portion of the lands reserved by a previous treaty. No other theory could justify the use of the word "disturbed" in the one case and the words "interfered with or determined" in the other. The court did not use those terms carelessly, but because they were appropriate to express with accuracy the idea intended to be conveyed.

That this is the view taken by this court is clearly shown by the case of *Missouri, Kansas and Texas Railway Company* v. *Roberts* (152 U. S., 114), wherein was brought in question legislation granting a railroad right of way through an Indian treaty reservation without consent of the Indians and without compensation. The court said (pp. 117–118) that—

> the uses to which the lands were to be applied necessarily involved their possession. That grant was absolute in terms, covering both the fee and possession, and left no rights on the part of the Indians to be the subject of future consideration. Though the law as stated with reference to the power of the Government to determine the right of occupancy of the Indians to their lands has always been recognized, it is

> to be presumed, as stated by this court in the Buttz case, that in its exercise the United States will be governed by such considerations of justice as will control a Christian people in their treatment of an ignorant and dependent race; the court observing, however, that the propriety or justice of their action toward the Indians, with respect to their lands, is a question of governmental policy, and is not a matter open to discussion in a controversy between third parties, neither of whom derives title from the Indians.
>
> * * * * *
>
> The right and power of the Government to dispose of the fee of the lands in controversy occupied by the Osage Indians with their rights of occupancy having been exercised, and a grant of both fee and possession having been made to the Missouri, Kansas and Texas Railway Company, it follows that this company, the plaintiff in error, is entitled to a reversal of the judgment. * * *

A like question arose and a similar decision was announced in *Spalding* v. *Chandler* (160 U. S., 394, 405–406), where the court said:

> The purposes of the treaty could not be defeated by the action of executive officers of the Government. (*United States* v. *Carpenter*, *supra*.) As a matter of fact, therefore, the Indian reserve continued to exist and to be used for the purposes for which it came into existence long after the President's orders of 1847. As stated, the reserve was not extinguished or the

rights of the Indians to the use of the tract destroyed or curtailed by those orders, and if the reservation for public uses and for the purposes of Fort Brady made by the President's orders was valid, the operation of those orders so far as the Indian reserve was concerned was clearly postponed until after the extinguishment of the reserve either by a voluntary cession to the Government, a cessation or abandonment of the use, *or the arbitrary exercise by Congress of its power to appropriate the same.*

* * * Whatever the reason, however, for the omission to make mention of the Indian reserve, *the power existed in Congress to invade the sanctity of the reservation and disregard the guaranty contained in the treaty of 1820, even against the consent of the Indians party to that treaty*, and as the requirement of the grant necessarily demanded the possession of the portion of the reserve through which the canal was to pass, the effect of that act was to extinguish so much of the Indian reserve as was embraced in the grant to the State for canal purposes.

A right to be properly denominated a *vested* right must have certain attributes which are illustrated by the case of *Society for Propagation of the Gospel, etc.*, v. *New Haven* (8 Wheat., 483), cited in appellant's brief. In this case a grant of lands was made in 1761 by the governor of the province of New Hampshire to the inhabitants of the province, to be incorporated into the town of New Haven, in which grant the society had one of sixty-eight shares. The tract was afterwards partitioned among the grantees agreeably to the laws

of the State of Vermont, of which it was then a part. Subsequently, and in 1794, the legislature of Vermont passed an act declaring lands thus granted under the authority of the British Government prior to the Revolution to be granted to the respective towns in which they lay. A perpetual lease was made to Wheeler by the town of a part of the lands so partitioned to the society. In an action in ejectment, brought by the society against the town and its lessees, the defendants claimed title solely under the act of the legislature of Vermont, and contended that by force of that act the title of the society was divested. The court held that the rights of the society were protected by the treaty of peace entered into after the Revolution; that this treaty was the supreme law of the land; that the act of 1794 passed in contravention thereof was void; and that the termination of the treaty of peace by the war of 1812 did not divest rights of property already vested under the treaty.

Other rights which have not the attributes of vested rights are illustrated in the *Chinese Exclusion case* (130 U. S., 581). The Government of China, by supplemental treaty of 1880, agreed with this Government that the latter might regulate, limit, and suspend the coming of Chinese laborers into this country without absolutely prohibiting such coming whenever, in the opinion of the latter, the interest of the country or any part of it might require such action. In 1882 Congress passed an act suspending the coming of Chinese laborers for the period of ten years, excepting from such

exclusion Chinese laborers who were in the United States on November 17, 1880, or who should come within ninety days after the passage of the act. Laborers within the exception had the right to visit China and return to the United States, provision being made for proper identification by issuing to them a certificate named.

In 1888 Congress passed another act prohibiting any Chinese laborers from entering the United States, whether they had theretofore been residents of the country or not. Chae Chan Ping, a Chinese laborer and a subject of the Chinese Government, had resided in the United States from 1875 until June 2, 1887, when he left for a visit to China, having in his possession a certificate such as the anti-Chinese laws then provided for, to enable him to return to this country. In September, 1888, he sailed from Hongkong for San Francisco. On his arrival the United States officers refused him permission to land, solely on the ground that the act of 1888 had annulled his certificate and his right to return. His petition for a writ of *habeas corpus* was denied by the United States circuit court, and upon appeal to this court that decision was affirmed. He claimed that by virtue of the treaty with China and the laws of Congress passed prior to the act of 1888 his right to return to the United States was a vested right, and in so far as the act of 1888 conflicted with such right it was unconstitutional and void. The Supreme Court held that such right was not a vested one, and that it could be destroyed or extinguished by subsequent legislation.

The only claim the Indians assert is that arising under the treaty of 1868, and to determine whether it is a vested right it is necessary to find whether it comes within the definitions of such rights. A vested right under a treaty was defined in the *Chinese Exclusion case* as follows (p. 609):

> The rights and interests created by a treaty, which have become so vested that its expiration or abrogation will not destroy or impair them, are such as are connected with and lie in property, capable of sale and transfer or other disposition, not such as are personal and untransferable in their character.

The right of occupancy here claimed was not capable of sale, transfer, or other disposition.

In *Stephens* v. *Cherokee Nation* (174 U. S., 445, 488) it is said:

> We repeat that in view of the paramount authority of Congress over the Indian tribes, and of the duties imposed on the Government by their condition of dependency, we can not say that Congress could not empower the Dawes Commission to determine, in the manner provided, who are entitled to citizenship in each of the tribes, and make out correct rolls of such citizens, an essential preliminary to effective action in promotion of the best interests of the tribes. It may be remarked that the legislation seems to recognize, especially the act of June 28, 1898, a distinction between admission to citizenship merely and the distribution of property to be subsequently made, as if there might be circumstances under which

> the right to a share in the latter would not necessarily follow from the concession of the former. *But in any aspect, we are of opinion that the constitutionality of these acts in respect of the determination of citizenship can not be successfully assailed on the ground of the impairment or destruction of vested rights. The lands and moneys of these tribes are public lands and public moneys, and are not held in individual ownership,* and the assertion by any particular applicant that his right therein is so vested as to preclude inquiry into his status involves a contradiction in terms.

The contention that the Indians had a vested right in these lands is not sustained.

THE COMPENSATION PAID THE INDIANS.

If the conclusion reached that this claim of the Indians did not amount to a vested right is correct, the other propositions submitted by appellant's brief must fall, and it is, perhaps, unnecessary to discuss them. We deem it not inappropriate, however, to refer to them very briefly. It is contended in argument that just compensation was not paid to the Indians, but there is no specific allegation in the bill upon which this argument can be based. It is stated in the bill (record, p. 9) that the price to be paid for the surplus lands is so far below their real value "as to require a court of equity administering the laws applicable to guardians and wards to set aside the sale as contrary to equity and good conscience." This averment might be apropos if the Indians held the full title to the lands, but it is not pertinent under the facts in this case. It is admitted that the Indians had only the right of

occupancy, the fee being in the United States, and there is no allegation as to the value of this right or that the compensation allowed for it was inadequate. For the tribal right of occupancy in about 2,000,000 acres of land each individual Indian was given absolutely 160 acres of land, amounting in all to about 480,000 acres. A like quantity of 480,000 acres was also reserved and set apart for their use in common as pasturage, and the sum of $2,000,000 is to be paid, a part of which ($500,000) is to be distributed to them per capita and the balance deposited in the United States Treasury to the credit of the Indians and to draw interest at the rate of 5 per cent per annum, to be paid to them per capita annually. It is submitted that the price thus to be paid is not obviously inadequate, and that the arrangement is not on its face contrary to any idea of fair dealing.

DUE PROCESS OF LAW.

Counsel for appellants admit that the only right the Indians had in the lands was that of mere occupancy, yet their argument is based on the theory that they had an absolute ownership in them. Proceeding upon this theory, counsel say that the act of June 6, 1900, is in violation of that part of the fifth amendment to the Constitution which provides that no person shall be deprived of property without due process of law, and adds that what is due process of law is a judicial and not a political question.

The transaction in question here did not deprive the appellants of property or any other property right such

as is contemplated by said amendment, but merely changed the form of such property, if property it be, and hence it does not fall within the inhibition of the amendment. But even though such occupancy be property or a property right within the meaning of said amendment, both the spirit and the letter of the amendment have been observed in dealing with it in this case. Due process of law, or according to the law of the land, does not in all cases mean a hearing before and a determination by a judicial tribunal. It is not always a question for the courts to determine. It is generally a judicial question for the courts to determine when a private party undertakes to interfere with or deprive another of property or property rights. But, as was said by Justice Curtis in *Murray's Lessees* v. *Hoboken Company* (18 How., 272, 284–285), "Even in a suit between private persons to try a question of private right, the action of the executive power upon a matter committed to its determination by the Constitution and laws is conclusive," citing *Luther* v. *Borden* (7 How., 1); *Doe* v. *Braden* (16 How., 635). But when property is appropriated or interfered with by the Government for public use, due process of law becomes a political question. Upon this subject Justice Cooley, in his work on Constitutional Limitations, sixth edition, says (p. 434):

> In judicial proceedings the law of the land requires a hearing before condemnation and judgment before dispossession; but when property is appropriated by the Government to public uses, or the legislature interferes to give

direction to its title through remedial statutes, different considerations from those which regard the controversies between man and man must prevail, different proceedings are required, and we have only to see whether the interference can be justified by the established rules applicable to the special case. Due process of law in each particular case means such an exertion of the powers of Government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs.

Private rights may be interfered with by either the legislative, executive, or judicial department of the Government. The executive department in every instance must show authority of law for its action, and occasion does not often arise for an examination of the limits which circumscribe its powers. The legislative department may in some cases constitutionally authorize interference, and in others may interpose by direct action.

Upon this question this court, in *Murray's Lessees* v. *Hoboken*, *supra*, says (p. 284):

To avoid misconstruction upon so grave a subject, we think it proper to state that we do not consider Congress can either withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity or admiralty; nor, on the other hand, can it bring under the judicial power a matter which, from its nature, is not a subject for judicial determination. At the same time

there are matters involving public rights which may be presented in such form that the judicial power is capable of acting on them and which are susceptible of judicial determination, but which Congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper. Equitable claims to land by the inhabitants of ceded territories form a striking instance of such a class of cases; and as it depends upon the will of Congress whether a remedy in the courts shall be allowed at all, in such cases, they may regulate it and prescribe such rules of determination as they may think just and needful. Thus it has been repeatedly decided in this class of cases that upon their trial the acts of executive officers, done under the authority of Congress, were conclusive, either upon particular facts involved in the inquiry or upon the whole title. (*Foley* v. *Harrison*, 15 How., 433; *Burgess* v. *Gray*, 16 How., 48; ———— v. *The Minnesota Mining Company*, at the present term.)

UNCONSTITUTIONALITY OF ACT OF CONGRESS NOT GROUND FOR INJUNCTION AGAINST EXECUTIVE DEPARTMENT TO PREVENT ITS EXECUTION.

In support of the proposition that the court will, by injunction, interfere to prevent the execution of an act of Congress on the ground of its unconstitutionality, counsel for appellants have cited *Board of Liquidation et al.* v. *McComb* (92 U. S., 531); *Osborne* v. *Bank of the United States* (9 Wheat., 739); and *Davis* v. *Gray* (16 Wall., 203). In each of these cases the injunction was asked and obtained against

State officers to prevent them from enforcing the provisions of a State law which was in conflict with the Constitution of the United States.

In *Mississippi* v. *Johnson* (4 Wall., 475, 499–500) it is said:

> It is true that in the instance before us the interposition of the court is not sought to enforce action by the Executive under constitutional legislation, but to restrain such action under legislation alleged to be unconstitutional. But we are unable to perceive that this circumstance takes the case out of the general principles which forbid judicial interference with the exercise of Executive discretion.
>
> It was admitted in the argument that the application now made to us is without a precedent, and this is of much weight against it.
>
> Had it been supposed at the bar that this court would in any case interpose by injunction to prevent the execution of an unconstitutional act of Congress, it can hardly be doubted that applications with that object would have been heretofore addressed to it.
>
> Occasions have not been wanting.
>
> The constitutionality of the act for the annexation of Texas was vehemently denied. It made important and permanent changes in the relative importance of States and sections, and was by many supposed to be pregnant with disastrous results to large interests in particular States. But no one seems to have thought of an application for an injunction against the execution of the act by the President.
>
> And yet it is difficult to perceive upon what

> principle the application now before us can be allowed and similar applications in that and other cases have been denied.
>
> The fact that no such application was ever before made in any case indicates the general judgment of the profession that no such application should be entertained.
>
> It will hardly be contended that Congress can interpose in any case to restrain the enactment of an unconstitutional law, and yet how can the right to judicial interposition to prevent such an enactment, when the purpose is evident and the execution of that purpose certain, be distinguished in principle from the right to such interposition against the execution of such a law by the President?
>
> The Congress is the legislative department of the Government; the President is the executive department. Neither can be restrained in its action by the judicial department, though the acts of both, when performed, are in proper cases subject to its cognizance.

Here, as there, the effort was to restrain action by the Executive under legislation alleged to be unconstitutional. The act of June 6, 1900, contained a direction as follows:

> That the lands acquired by this agreement shall be opened to settlement by proclamation of the President within six months after allotments are made.

This suit was brought before the President had issued his proclamation. While the suit was formally brought against the Secretary of the Interior and other officers

of the Interior Department, the purpose was to prevent any steps being taken toward opening said lands to settlement, entry, and disposition under said act. The purpose of the Indians in these proceedings is stated in the brief of their counsel, as follows (p. 59):

> They seek principally to enjoin the Secretary of the Interior and all other officials of the Government from opening their lands to settlement by white people without their consent and in violation of property rights, secured to them by the solemn provisions of a treaty, which is the supreme law of the land.

The acts to be done and performed by the appellees here were but incidents following upon the proclamation of the President and necessary to carry it into effect. In the absence of such a proclamation appellees could not open to settlement or disposition the unallotted lands; could not in any manner receive entries for or otherwise dispose of or encumber such lands, and could do absolutely nothing which would be injurious to the Indians. This suit was in effect to restrain the Secretary of the Interior and other officers from carrying into effect a proclamation of the President not then issued or determined upon; its purpose was to prevent by injunction the execution of said law by the President, and therefore the decision in the case last cited is exactly in point.

However, it is unnecessary to discuss the abstract question as to the action that would be taken by the courts to prevent the execution of a law found to be unconstitutional, because, in the case at bar, an injunc-

tion is asked to prevent the executive department of the Government from enforcing an act of Congress concerning a matter that is purely political in its nature.

NO MINISTERIAL ACT INVOLVED HERE.

Counsel for appellants discuss (pars. 60–67) at some length the difference "between acts of executive officers which are political or quasi judicial, and therefore not reviewable by the courts, and those acts and duties which are not political or quasi judicial, but which are subjects of judicial cognizance and control." In the cases cited this court asserted authority to compel an executive officer to perform a duty involving no exercise of discretion on his part and peremptorily commanded by law to be done; that is, a mere ministerial act, or to prevent the doing by an executive officer of an act in violation of or not warranted by law. As shown by a much longer line of decisions not necessary to mention specifically, the rule is laid down that the courts will refuse to interfere with or attempt to control executive officers in the discharge of duties involving the exercise of discretion. We submit, however, that all this has no place in the discussion of the questions involved here. The subject-matter here is political in its nature as contradistinguished from judicial. It is within the jurisdiction of the legislature as the political branch of the Government and not within that of the courts as the judiciary branch. The authorities cited by appellants do not in the slightest degree tend to controvert that proposition, and we venture the assertion that none can be found that do controvert it.

MISTAKES IN BRIEF OF APPELLANTS, AND BRIEF ANSWER TO SOME POINTS THEREIN.

In the first paragraph of their brief counsel for appellants correctly quote an extract from the opinion of the court of appeals of the District of Columbia in this case, but in the next paragraph they make the mistake of saying: "This is an historical error." The court was not attempting to recite the history of dealings with the Indians, but to state the principles of law which govern their holdings of lands. The fact, if it were such, that the United States has never found it necessary to exercise the power to change the Indians from one locality to another, as may best serve the welfare of the Indians and the purposes and policy of the Government, does not disprove the existence of the power, nor does it change the tenure by which the Indians hold the lands occupied by them. This error on the part of counsel in assuming that history, instead of law, controls, pervades all their brief, and renders nugatory many of the propositions upon which they apparently place great reliance.

Paragraphs 2, 3, 4, and 5 are devoted to recitation of so-called historical facts.

In paragraph 6 counsel quote two extracts from the American and English Encyclopedia of Law as sustaining the proposition that the right of the Indians to lands occupied by them can be extinguished only by their consent, and say the text is supported by numerous Federal and State authorities cited in notes under the propositions quoted. The cases thus cited from this court have all been referred to elsewhere herein,

except *Clark* v. *Smith*, 13 Pet., 195; *Doe* v. *Wilson*, 23 How., 457; *Butts* v. *Northern Pacific R. R. Co.*, 119 U. S., 55; *Spalding* v. *Chandler*, 160 U. S., 394; and *Fee* v. *Brown*, 162 U. S., 602. An examination of these cases shows that they do not sustain the proposition asserted. Inasmuch as counsel has not specified any statement in any one of these decisions as being in point, we will not undertake to analyze each of them here. They all assert that the fee of such lands is in the United States, the Indians having only a right of occupancy which, as said in *Clark* v. *Smith*, "was protected by the political power and respected by the courts until extinguished." In *Spalding* v. *Chandler*, which involved a Congressional grant of a right of way through an Indian reservation, without consent of the Indians or compensation to them and in contravention of treaty stipulations, it was said (p. 407):

> The power existed in Congress to invade the sanctity of the reservation and disregard the guarantee contained in the treaty of 1820, *even against the consent of the Indians*, party to that treaty, and as the requirement of the grant necessarily demanded the possession of the portion of the reserve through which the canal was to pass, the effect of the act was to extinguish so much of the Indian reserve as was embraced in the grant to the State for canal purposes.

This last case not only controverts the proposition in support of which it is cited, but also demonstrates the inaccuracy of the historical statement upon which appellants place such great reliance.

The cases from other United States courts do not support the proposition. In *United States* v. *Flournoy, etc., Co.* (69 Fed. Rep., 886, 893) no question as to the extinguishment of the Indian claim to lands was involved. In *United States* v. *Alaska Packing Association* (79 Fed. Rep., 152, 157) the court cited and followed *Spalding* v. *Chandler, supra.* In *Northern Pacific R. R. Co.* v. *Dudley* (85 Fed. Rep., 82, 84) the court, speaking of the Indian right of occupancy, said:

> *It is true as against the Government, it constitutes no barrier, and it has always been unceremoniously brushed aside when in conflict with the Government's interest; but, at the same time, it has been considered a title so sacred and valid that no other party can ever disturb it without the consent and authority of the Government.*

United States v. *Pine River, etc., Co.* (89 Fed. Rep., 907, 912) cites *United States* v. *Cook* (19 Wall., 591) and *Beecher* v. *Wetherby* (95 U. S., 517) as defining the Indian claim to lands occupied by them. In *United States* v. *Four Bottles Sour Mash Whiskey* (90 Fed. Rep., 720, 722) it is said:

> It is also settled by the decisions of the Supreme Court that the Government of the United States is the primary and ultimate source of title to the public domain, and the Indians are not recognized as having any title, except the mere right of occupancy, *which Congress has the right at any time to extinguish.*

In paragraph 7 reference is made to a New York State authority, which is cited and quoted from as a conclusive authority. Whatever respect that decision

may command as to the relations between the State of New York and the Indian tribes residing there, and that was the only question involved or referred to there, it can not be accepted as of conclusive effect here.

Paragraphs 8 and 9 repeat the mistake of considering history rather than law as the controlling factor in this discussion.

Paragraphs 10 to 21 are devoted to a discussion of the character of the Indian right of occupancy, which matter is fully discussed elsewhere herein.

Paragraphs 22 and 23 discuss this transaction as merely a contract, whereas it involves much more than that, namely, the exercise of the sovereign power of the Government.

Paragraphs 24 to 26 assert that the question involved here is not political, but that matter has been referred to elsewhere herein, and it is unnecessary to now take up space and time in further consideration of it.

In paragraph 27 appellants refer to and quote from the decision in *New York Indians* v. *United States* (170 U. S., 1, 23) as being exactly in point in this case. The quotation given is taken from the middle of a paragraph and without the context does not fairly present the position of the court. This court said that the provision being considered there was not found in the original nor in the published copy of the treaty nor in the proclamation of the President, which purported to give the treaty word for word, and that it

never received the sanction or approval of the President, a part of the treaty-making power. Counsel for appellants say (par. 28, brief):

> This proviso was passed by the Senate and thus became a part of the treaty so far as that body was concerned, and the treaty is so printed in the volume entitled Revision of Indian Treaties, page 550. But by some mistake the proviso was not submitted to the Indians for their approval, with the other Senate amendments, and was not proclaimed by the President as a part of the treaty. However, as the treaty was printed officially, the proviso appeared as a part of the text.

An examination shows that neither the resolution nor the proviso thereto referred to by this court appears as a part of or in connection with said treaty as officially printed in 7 Statutes at Large (pp. 550–564) or in Revision of Indian Treaties (pp. 548–560). The treaty contained a provision (article 3) that such of said tribes "as do not *accept and agree to remove*," etc., should forfeit all interest in the lands set apart for them. This is the provision the counsel had in mind in their discussion here. The matter to which the court referred is found in a Senate resolution to which there was a proviso: "That if any portion or part of said Indians do not *emigrate*," etc. This mistake upon the part of counsel evidently led to the erroneous statement that the official publication of the treaty embraced the provision referred to by the court in said case, and the consequent contradiction of the statement made by the court.

Considered as a historical precedent, this case of the New York Indians strongly supports the position of the Government in the case at bar. Under Congressional enactments the treaty lands in Kansas (to which the Indians had a much higher right and title than was given by the Medicine Lodge treaty) were disposed of as public lands without consent of the Indians and without provision for their compensation. The power of the Government to do this and the title of the Kansas purchasers were not questioned. The political branch of the Government in recognition of the claim asserted before it, did, in the exercise of its exclusive authority, authorize the Court of Claims, and this court upon appeal, to hear and determine the claim and award appropriate compensation to the Indians. Everything done and said in that case is consistent with the established view that Congress, in the exercise of its authority over tribal Indians and tribal lands, can dispose of the lands, and that if any injustice is done the Indians in the exercise of that power, "the remedy is with the political department of the Government." (*United States* v. *Choctaw, etc., Nations*, 179 U. S., 494, 535.)

In paragraphs 29 to 33 counsel assert and attempt to support the proposition that the Indians had a vested right of property in the lands in question, which proposition has been noticed and, we submit, disproved elsewhere herein.

The propositions put forward and discussed in paragraphs 34 to 38, as to the character of the Indian

claim, and in 39 to 44, as to what constitutes due process of law, and also in 45 to 48, have been considered at different places herein and need not be taken up again.

Paragraph 49 involves an error of statement, inasmuch as many adjudicated cases, as has been shown, have recognized the right of Congress to terminate the Indian right of occupancy at any time and in such manner as may seem to that body appropriate.

The proposition set forth in paragraph 50, that Indians have rights, is not disputed. But those rights and the protection of the Indians in their enjoyment, as between them and the Government, lie with the political branch of the Government, and not with the judiciary.

The attempt in paragraphs 51 to 55 to controvert the proposition that due process of law does not always mean a hearing before and determination by a judicial tribunal has wholly failed.

In paragraph 56 appellants practically abandon one of the main features of their bill of complaint, viz: The effort to have it declared that the Jerome agreement was fraudulently procured.

The subjects discussed in paragraphs 57 to 68 have all been treated of at other places herein.

Paragraphs 69 to 74 relate to the proposition that Indians may sue in the courts. We are willing that the case at bar should be determined upon other grounds, and hence submit nothing upon this question.

As opposed to the statements in paragraphs 75 and

76, attention is invited to the President's proclamation of July 4, 1901. (See Presidential Proclamations, p. 11, at end of acts of first session, Fifty-seventh Congress.)

If the Indians have the lawful capacity to accept or reject proposals for the disposition of the lands occupied by them, as claimed in appellants' brief, they have equal capacity, by subsequent conduct and acceptance of advantages, to estop themselves from questioning such disposition when made without their prior consent; and if they are without such capacity, the necessity for the guardianship of Congress must be conceded.

Paragraphs 77 to 88 are devoted to a discussion of the decision of Justice Bradley, of the supreme court of the District of Columbia, and the authorities cited therein. The decision and the authorities speak for themselves, and an examination of them sustains the decision.

Paragraphs 89 to 97 refer to and comment upon some of the cases cited by appellees in the court below. These same authorities are cited in this brief, and we do not feel that the comments made by appellants require further discussion.

In paragraph 98 counsel for appellants assert that the act of June 28, 1898, has been regarded by all persons familiar with conditions in Indian Territory as coercive in its nature and as intended to constrain the Five Civilized Tribes to enter into agreements with the United States. This court will not inquire into the

motives of Congress in passing that act. If such was the purpose of Congress, that fact would not impair its importance as an assertion by Congress of its power in the premises. Neither does the fact that other provision has since been made in respect of the Cherokees destroy the force of said act as a legislative precedent. It may tend to show that Congress exerts the full measure of its authority only when there is urgent public necessity therefor.

The contention in paragraph 99 that the decision of this court in *Stephens* v. *Cherokee Nation* (174 U. S., 445) must be taken as referring only to the provisions of said act of 1898, relating to citizenship, has been referred to hereinbefore.

Paragraph 100 contains a recitation not material to this case, and an imputation as to the motives of the Secretary of the Interior in making certain recommendations to Congress in respect of matters therewith submitted for legislative action which merits no notice for the purpose of refutation, and is remarkable only because not to be expected from counsel of the high character of those presenting the brief in which it is found.

Paragraph 101, and the last, states that "there is some doubt even as to whether Congress really intended to ratify the so-called Jerome agreement." There is nothing to support this statement, and it was probably not expected it would be taken seriously.

STATEMENTS IN BILL TOO GENERAL AND INDEFINITE.

In addition to the objections hereinbefore urged against the bill here, in respect to the subject-matter,

there are other points of objection that should be noticed. The averment as to the inadequacy of the compensation is not, as before shown, pertinent under the facts. Furthermore, the averments as to the important matters of fraud and deceit are not sufficiently definite to entitle them to consideration, and upon that ground alone the demurrer should be sustained. It is charged that the signatures to said agreement, ratified by the act of June 6, 1900, were obtained by "certain false and fraudulent representations:" that the interpreters "falsely and fraudulently misrepresented the provisions of said treaty, so that as signed it did not express the wishes of the Indians." What particular part of the agreement, called in the bill "treaty," was misrepresented or misinterpreted is not pointed out. The court is entitled to be specifically informed on this point, that it may determine whether the alleged misinterpretation and misrepresentation were as to any material part of the instrument. Where fraud is charged, the averments must be explicit and specific, not vague and general, as here. The writ of injunction will be granted only when a clear right thereto has been shown, and for this reason the petitioner therefor must state fully and clearly the facts and particulars upon which his petition is based. The necessity for particularity and definiteness in the allegations is especially imperative in a case like this, where the claim to the writ is based solely upon the alleged unconstitutionality of an act of Congress. Since the courts will not

declare an act of Congress void for repugnancy to the Constitution "except in a clear case," a petition asking such a judgment should make out such a case, which could be done here only by showing that the alleged false translations and misrepresentations referred to some material part of the agreement. The court should not be called upon to hear or the respondents to answer the vague and general allegations of this bill as to fraud and misrepresentation.

As said before, the complainants have virtually abandoned all contentions based upon allegations that said agreement, called treaty in the bill, was procured by fraud and misrepresentations, since they concede that the courts have no jurisdiction or authority to consider and determine whether a treaty or act of Congress has been procured by fraud or duress.

CHANGES IN AGREEMENT ARE ADVANTAGEOUS TO INDIANS.

There is no reason for complaining of the changes alleged to have been made in said agreement before its ratification by Congress upon the ground that they worked any injury to the Indians or did them any injustice. An examination of the alleged changes as set forth in the bill (record, pp. 9–11) discloses that in every instance the change was in the interest and for the benefit of the Indians. The first item shows an added condition upon the United States. The second item, following out that condition, shows that, in addition to the allotments provided for, the Indians were to have set aside for their use in common 480,000 acres, which would be equivalent to

another 160 acres for each member of the tribes. The third item shows a change as to the manner of payment of the money to go to them, made evidently for the better safeguarding of their interests. The last item shows the striking off of the names of two persons who had been included in the benefits of the agreement. The fact that these two names had been inserted in the original agreement is mentioned in another part of the bill (record, p. 5) as a ground of complaint. These changes, instead of working any injury to the Indians, were calculated to inure to their advantage and serve to illustrate the purpose and care of Congress to fully protect them.

THE INDIANS HAVE ASSENTED TO THE AGREEMENT AND ALL AMENDMENTS.

It appears by public documents, of which the court will take judicial notice, and by the records of the Interior Department, of which the court can also take judicial notice (*Knight* v. *U. S. Land Association*, 142 U. S., 161, 168–169), that complainants here, and all other members of the tribe, both as individuals and as a tribe, have accepted the benefits of this legislation. The proclamation of the President of July 4, 1901 (see appendix of Proclamations in acts of first session Fifty-seventh Congress), shows that all allotments provided for by said agreement have been selected and approved, and that lands for the use of said tribes in common have been set apart as therein provided. If it be said that Congress could not act in the absence of consent by the Indians,

yet it must be held that the Indians, by accepting the benefits of the agreement with the amendments thereto, have thereby signified their assent to and approval of the action taken by Congress. If the Indians were, as claimed, free to accept or reject the provisions of said act, the time of exercising their discretion is not material; but having indicated acceptance both as individuals and as a tribe by receiving the benefits of the legislation, they will not be heard to afterwards object that said act is in violation of the Constitution. (Cooley's Constitutional Limitations, p. 214, 6th ed.; Black's Constitutional Law, sec. 35.) The rule is stated by Mr. Black as follows:

> Persons may also become estopped from denying the constitutionality of a statute by participating in the procurement of its passage, by acquiescing in it after its passage, or by accepting benefits under it, although it may be invalid as to all other persons.

Upon this subject Mr. Cooley says

> There are cases where a law in its application to a particular case must be sustained, because the party who makes objection has, by prior action, precluded himself from being heard against it. Where a constitutional provision is designed for the protection solely of the property rights of the citizen, it is competent for him to waive the protection and to consent to such action as would be invalid if taken against his will. On this ground it has been held that an act appropriating the private property of one person for the private purposes of another, on

> compensation made, was valid if he whose property was taken assented thereto; and that he did assent and waive the constitutional privilege if he received the compensation awarded or brought an action to recover it.

The principle is recognized and applied by this court in *Lindsey and Phelps Co.* v. *Mullen* (176 U. S., 126, 146). A statute of Minnesota authorizing the formation of companies for improving streams in the State and for driving, holding, and handling logs therein contained a provision giving such a company a lien upon all logs so handled to pay the tolls, costs, and expenses incurred. The logs of the plaintiff had been seized to pay the expenses connected with a boom which included other logs than theirs. This court held the lien good upon the theory that when a log owner decided to avail himself of the boom it could not be said that he was deprived of his property without due process of law, if he was compelled to subject it to the conditions which the legislature prescribed for the use of such boom.

The doctrine has perhaps been most frequently applied in cases involving alleged unjust taxation. In *Wight* v. *Davidson* (181 U. S., 371) several authorities bearing upon the subject were cited, and it was said (p. 377):

> The constitutional right against unjust taxation is given for the protection of private property, and may be waived by those affected who consent to such action to their property as would otherwise be invalid.

The principle is again expressly recognized in *O'Brien* v. *Wheelock* (184 U. S., 450). There the court held that the legislation involved in that case was invalid and could not be given effect by the doctrine of estoppel, but in respect to this conclusion said (p. 491):

> The result is not inconsistent with the cases that hold that although a law is found to be unconstitutional, a party who has received the full benefit under it may be compelled to pay for that benefit according to the terms of the law. This is upon the theory of an implied contract, the terms of which may be sought in the invalid law, and which arises when the full consideration has been received by the party against whom the contract is sought to be enforced.

Accepting, for the purpose of the argument only, the contention of the appellants that this legislation is to be considered only as a contract between the United States and the Indians, the statement last quoted is peculiarly pertinent.

IN CONCLUSION.

It is respectfully insisted that the course pursued was for the best interests of all concerned. The Indians had at the most a right of occupancy, the fee to the land being in the United States. That right of occupancy rested in the Indians as a tribe and not as individuals. No one of them could assert a right in a particular tract of the territory thus occupied that would justify him in making a permanent home thereon. He had no interest in any tract or in the land as a whole which he could dispose of, which he could

assert if he ceased to be a member of the tribe, or which would pass to his heirs at his death. There was nothing in his connection with the land that tended to his civilization or improvement, financially, or otherwise. The reservation had come to be surrounded by populous white settlements; the wild game had been exterminated; support by the chase was no longer possible, and the last of the thirty installments of clothing and provisions promised by the treaty of 1868 had been delivered. The Indians had not become self-supporting and had made no advance in that direction which would justify a hope that they ever would become so under the old system. It was not only the right, but the imperative duty of the United States to change this condition of affairs and to make such provision for these people as would start them upon the road to self-support and civilization.

To successfully accomplish this it was necessary that each individual should be invested with the ownership of a tract which he should look upon as his own and sufficiently large to justify the belief that it would afford him a support. The indefinite, intangible, undivided, and indivisible interest of the individual in the tribal right of occupancy must be replaced by a defined, separate, and distinct personal right in and to a specific tract of land. Hence the first care was to allot to each individual member of the tribes 160 acres, with a promise of ultimate absolute ownership. As a measure for the further protection of the Indian a like quantity of land was set apart for the use in common of

the tribes. To furnish means for the building of houses, the purchase of farm implements, the opening up of farms, and the means of subsistence for a time, it was necessary that the tribal right of occupancy as to the lands not needed for individual allotments or for making up the quantity to be set aside for tribal use be converted into funds which could be used for those purposes. This also was done. Whether the sum fixed upon represented the full value of the right given up by the Indians it is impossible to say with absolute certainty. There is no measure of value of such right as they held. The complainants allege that the price fixed was far below the real value of the land, but do not say it was below the value of the qualified claim of the Indians. The facts before the court do not present any ground, legal or equitable, for the interference of the courts, and the decree of the court dismissing the bill should be affirmed.

WILLIS VAN DEVANTER,
Assistant Attorney-General.

O

No. 275.

Br. of Atty. Gen. & Van Devanter

Office Supreme Court U.S.
FILED
JAMES H. MCKENNEY
Clerk

Filed Oct. 20, 1902.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

LONE WOLF, ETC., APPELLANTS,
v.
ETHAN ALLEN HITCHCOCK, ETC., APPELLEES. } No. 275.

ON APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

MOTION BY APPELLEES TO DISMISS APPEAL, AND BRIEF IN SUPPORT OF SAME.

3014

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

LONE WOLF, ETC., APPELLANTS,
v.
ETHAN ALLEN HITCHCOCK, ETC., APPELLEES. } No. 275.

ON APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

MOTION BY APPELLEES TO DISMISS APPEAL.

The appellees in the above-entitled cause move the court to dismiss the pending appeal, for the reason that the only purpose of the suit is to enjoin the defendants, as public officers, from carrying into effect certain acts of Congress, and since the decree in the supreme court of the District of Columbia denying the injunction the status of the lands in controversy and the position of the parties in interest have so far changed that of the things sought to be enjoined nothing remains undone the doing of which can now be enjoined in this suit, all of which more fully appears by the affidavit hereto attached and the public documents therein referred to.

This motion is interposed by way of renewal of a like motion made in the court of appeals, but not

acted upon in that court (see last paragraph of Court of Appeals opinion, Record, p. 44).

WILLIAM C. POLLOCK,
ANTHONY C. CAMPBELL,
Assistant Attorneys.

WILLIS VAN DEVANTER,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

LONE WOLF, ETC., APPELLANTS,
v.
ETHAN ALLEN HITCHCOCK, ETC., APPELLEES.

No. 275.

ON APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS APPEAL.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Ethan A. Hitchcock, being first duly sworn, upon his oath deposes and says that he is the Secretary of the Interior, and, as such, is one of the appellees in the above-entitled cause: that prior to the rendition of the decree in the supreme court of the District of Columbia the work of carrying into effect the acts of Congress of June 6, 1900, January 4, 1901, and March 3, 1901, had been prosecuted to the extent named in the affidavit of this affiant set forth at pages 16 to 18, both inclusive, of the printed transcript of record herein: that since that time said work has been more fully performed, as follows: The allotments

in severalty to the Indians and to the religious and other societies under the act of Congress of June 6, 1900, have been completed and patents to the allottees have been signed, sealed, recorded, and transmitted to the Indian agent preparatory to their delivery; the selecting and setting aside of the required 480,000 acres for the use in common of the Indian tribes as grazing lands have been finally and accurately consummated; the work of subdividing, platting, and selling at public vendue the lots in the town sites of the new county seats into which the ceded territory was divided has been completed, the money arising from such sales has been covered into the Treasury of the United States preparatory to its disbursement in the manner directed in the act of Congress of March 3, 1901, and $66,401 19 thereof has been so disbursed; two additional land districts have been established by the President, to include the ceded territory; the Territory of Oklahoma has made selections, from the surplus ceded lands, of 97,732.53 acres, under its school and other educational grants, in conformity with the act of Congress of March 2, 1895, and these selections have been approved by the Secretary of the Interior; the President has put into a public forest reserve 57,120 acres of the surplus ceded lands under the acts of Congress of March 3, 1891, and June 4, 1897; and the President, by his proclamation of July 4, 1901, opened the remaining surplus ceded lands to settlement and entry under the homestead and town-site laws on August 6, 1901, since which time the entire body of surplus ceded lands, excepting small and isolated tracts of little value and of small aggregate acreage, has been regularly claimed and entered by homestead and town-site claimants, in conformity with the President's proclama-

tion and the homestead and town-site laws. Entries of these lands aggregating more than 7,500 acres have been carried to final proof, upon some of which patents have issued.

And affiant further says that he is reliably informed, and believes, that the purchasers of the town lots at the county seats of the new counties, and their grantees, and the homestead and town-site entrymen of other lands, numbering not less than 12,000, are now occupying the lots and lands purchased and entered by them, respectively, and have improved the same at an aggregate cost of millions of dollars; that the three county-seat towns in said ceded territory, viz, Anadarko, Lawton, and Hobart, have been duly incorporated under the laws of the Territory of Oklahoma, and now have organized and subsisting municipal governments; that there are two completely organized and subsisting county governments wholly within said ceded territory; that a third completely organized and subsisting county includes the remaining portion of said ceded territory, together with other lands, and the county seat of this county is within said ceded territory; that the three county seats within this ceded territory are respectively possessed of a population as follows: Anadarko, 2,800; Hobart, 2,300, and Lawton, 7,000; and that the town of Apache in said ceded territory, the site of which has been entered under the President's proclamation and the town-site laws, has a population of 550.

And affiant further says that he is reliably informed and believes that since the rendition of the decree of the supreme court of the District of Columbia herein 526 male adults of said Indians, being more than three-fourths of the total number of male adults in said tribes,

signed and presented to the Secretary of the Interior a petition which, omitting signatures, is as follows:

PETITION BY APACHE, KIOWA, AND COMANCHE INDIANS, OF KIOWA AGENCY, OKLAHOMA.

To the Honorable
The SECRETARY OF THE INTERIOR,
Washington, D. C.

(Through the U. S. Indian agent, Kiowa Agency, Oklahoma, and the office of Indian Affairs, Washington, D. C.)

SIR: We, the undersigned adult male members of the Apache, Kiowa, and Comanche tribes of Indians of Kiowa Agency, Oklahoma, do hereby make formal request and pray that the benefits in money provided for us by act of Congress approved June 6, 1900, may be paid to us in accordance with the terms and provisions of said act of June 6, 1900, and with as little delay as is consistent.

Thereafter, and in pursuance of said petition and of the provisions of article 6 of the Comanche, Kiowa, and Apache agreement, amended and ratified by said act of June 6, 1900, there was paid and distributed per capita to the members of said tribes upward of $130,000 of the $500,000 mentioned in said article 6 as part compensation for the lands ceded to the United States by said agreement; that the per capita payment and distribution so made was accepted by every adult member of the Comanche tribe, by every adult member of the Apache tribe, and, excepting 21 members thereof, by every adult member of the Kiowa tribe; that the circumstances surrounding the signing of said petition and the acceptance of said payment are described as follows in a communication to the Secretary of the

Interior from the Indian agent in charge of the Kiowa Agency:

> Five hundred and twenty-six male adults of Comanches, Apaches, and Kiowas signed petition for distribution of money under act of June sixth, nineteen hundred, being more than three-fourths male adults of the tribes. The petition was prepared at the request of Quanah Parker, chief of the Comanches, Ahpeatone, chief of the Kiowas, Apache John, chief of Apaches. Every person who signed it had explained to him by myself just how it originated and what it was intended to procure. Every adult of the Comanche tribe, every adult of the Apache, and every member of said tribes received the payment without any manner of protest, and all the adult Kiowas with the exception of twenty-one * * * accepted the payment. All who took the payment were fully informed with regard to the origin of the money they received.

As further evidencing the accomplishment of many of the matters here stated, there are hereto attached the President's proclamation opening the ceded country to settlement and entry, the notice of the establishment by the President of two additional land districts in the ceded territory, the order dividing the ceded country into counties and designating the places of the county seats of the new counties, the President's proclamation establishing the Wichita Forest Reserve, and the report of the Assistant Commissioner of the General Land Office, showing the subdivision, platting, and sale of the lots in the new county-seat town sites and the entry of the ceded lands under the homestead and town-site laws during the first sixty days following the opening. These public documents are taken from the appendix of the report of the Secretary of the Interior for the fiscal year ended June 30, 1901, pages 225 to 259. *It*

should be noticed that in addition to the Comanche, Kiowa, and Apache lands these public documents also relate to Wichita and Caddo lands not here in question.

ETHAN A. HITCHCOCK.

Subscribed in my presence and sworn to before me this 18th day of October, A. D. 1902.

[SEAL.] W. BERTRAND ACKER,
Notary Public.

OPENING OF KIOWA, COMANCHE, APACHE, AND WICHITA INDIAN LANDS IN THE TERRITORY OF OKLAHOMA.

By the President of the United States of America.

A PROCLAMATION.

Whereas, by an agreement between the Wichita and affiliated bands of Indians on the one part and certain commissioners of the United States on the other part, ratified by act of Congress approved March 2, 1895 (28 Stat., 876, 894), the said Indians ceded, conveyed, transferred, and relinquished, forever and absolutely, without any reservation whatever, unto the United States of America, all their claim, title, and interest of every kind and character in and to the lands embraced in the following-described tract of country now in the Territory of Oklahoma, to wit:

> Commencing at a point in the middle of the main channel of the Washita River, where the ninety-eighth meridian of west longitude crosses the same; thence up the middle of the main channel of said river to the line of 98° 40′ west longitude; thence on said line of 98° 40′ due north to the middle of the channel of the main Canadian River; thence down the middle of said main Canadian River to where it crosses the ninety-eighth meridian; thence due south to the place of beginning

And whereas, in pursuance of said act of Congress ratifying said agreement, allotments of land in severalty have been regularly made to each and every mem-

ber of said Wichita and affiliated bands of Indians, native and adopted, and the lands occupied by religious societies or other organizations for religious or educational work among the Indians have been regularly allotted and confirmed to such societies and organizations, respectively:

And whereas, by an agreement between the Comanche, Kiowa, and Apache tribes of Indians on the one part and certain commissioners of the United States on the other part, amended and ratified by act of Congress approved June 6, 1900 (31 Stat., 672, 676), the said Indian tribes, subject to certain conditions which have been duly performed, ceded, conveyed, transferred, relinquished, and surrendered, forever and absolutely, without any reservation whatsoever, expressed or implied, unto the United States of America, all their claim, title, and interest of every kind and character in and to the lands embraced in the following-described tract of country now in the Territory of Oklahoma, to wit:

> Commencing at a point where the Washita River crosses the ninety-eighth meridian west from Greenwich, thence up the Washita River, in the middle of the main channel thereof, to a point thirty miles, by river, west of Fort Cobb, as now established; thence due west to the north fork of Red River, provided said line strikes said river east of the one hundredth meridian of west longitude; if not, then only to said meridian line, and thence due south on said meridian line to the said north fork of Red River; thence down said north fork, in the middle of the main channel thereof, from the point where it may be first intersected by the lines above described, to the main Red River; thence down said Red River, in the

middle of the main channel thereof, to its intersection with the ninety-eighth meridian of longitude west from Greenwich; thence north, on said meridian line, to the place of beginning.

And whereas, in pursuance of said act of Congress ratifying the agreement last named, allotments of land in severalty have been regularly made to each member of the said Comanche, Kiowa, and Apache tribes of Indians; the lands occupied by religious societies or other organizations for religious or educational work among the Indians have been regularly allotted and confirmed to such societies and organizations, respectively; and the Secretary of the Interior, out of the lands ceded by the agreement last named, has regularly selected and set aside, for the use in common for said Comanche, Kiowa, and Apache tribes of Indians, four hundred and eighty thousand acres of grazing lands:

And whereas, in the act of Congress ratifying the said Wichita agreement, it is provided:

> That whenever any of the lands acquired by this agreement shall, by operation of law or proclamation of the President of the United States, be open to settlement, they shall be disposed of under the general provisions of the homestead and town-site laws of the United States: *Provided*, That in addition to the land-office fees prescribed by the statute for such entries the entryman shall pay one dollar and twenty-five cents per acre for the land entered at the time of submitting his final proof: *And provided further*, That in all homestead entries where the entryman has resided upon and improved the land entered in good faith for the period of fourteen months he may commute his entry to cash upon the payment of one dollar

and twenty-five cents per acre: *And provided further*, That the rights of honorably discharged Union soldiers and sailors of the late civil war, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, shall not be abridged: *And provided further*, That any qualified entryman having lands adjoining the lands herein ceded, whose original entry embraced less than one hundred and sixty acres, may take sufficient land from said reservation to make his homestead entry not to exceed one hundred and sixty acres in all, said land to be taken upon the same conditions as are required of other entrymen: *Provided*, That said lands shall be opened to settlement within one year after said allotments are made to the Indians.

* * * * *

That the laws relating to the mineral lands of the United States are hereby extended over the lands ceded by the foregoing agreement.

And whereas in the act of Congress ratifying the said Comanche, Kiowa, and Apache agreement it is provided—

That the lands acquired by this agreement shall be opened to settlement by proclamation of the President within six months after allotments are made and be disposed of under the general provisions of the homestead and townsite laws of the United States: *Provided*, That in addition to the land-office fees prescribed by statute for such entries the entryman shall pay one dollar and twenty-five cents per acre for the land entered at the time of submitting his final proof: *And provided further*, That in all homestead entries where the entryman has resided upon and improved the land entered in good faith for the period of fourteen months he

may commute his entry to cash upon the payment of one dollar and twenty-five cents per acre: *And provided further*, That the rights of honorably discharged Union soldiers and sailors of the late civil war, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, shall not be abridged: *And provided further*, That any person who having attempted to but for any cause failed to secure a title in fee to a homestead under existing laws, or who made entry under what is known as the commuted provision of the homestead law, shall be qualified to make a homestead entry upon said lands: *And provided further*, That any qualified entryman having lands adjoining the lands herein ceded, whose original entry embraced less than one hundred and sixty acres in all, shall have the right to enter so much of the lands by this agreement ceded lying contiguous to his said entry as shall, with the land already entered, make in the aggregate one hundred and sixty acres, said land to be taken upon the same conditions as are required of other entrymen: *And provided further*, That the settlers who located on that part of said lands called and known as the "neutral strip" shall have preference right for thirty days on the lands upon which they have located and improved.

* * * * *

That should any of said lands allotted to said Indians, or opened to settlement under this act, contain valuable mineral deposits, such mineral deposits shall be open to location and entry, under the existing mining laws of the United States, upon the passage of this act, and the mineral laws of the United States are hereby extended over said lands.

And whereas, by the act of Congress approved January 4, 1901 (31 Stat., 727), the Secretary of the Interior was authorized to extend, for a period not exceeding eight months from December 6, 1900, the time for making allotments to the Comanche, Kiowa, and Apache Indians, and opening to settlement the lands so ceded by them;

And whereas, in pursuance of the act of Congress approved March 3, 1901 (31 Stat., 1093), the Secretary of the Interior has regularly subdivided the lands so as aforesaid respectively ceded to the United States by the Wichita and affiliated bands of Indians and the Comanche, Kiowa, and Apache tribes of Indians into counties, attaching portions thereof to adjoining counties in the Territory of Oklahoma, has regularly designated the place for the county seat of each new county, has regularly set aside and reserved at such county seat land for a town site to be disposed of in the manner provided by the act of Congress last named, and has regularly caused to be surveyed, subdivided, and platted the lands so set aside and reserved for disposition as such town sites;

And whereas, by the act of Congress last named, it is provided—

> The lands to be opened to settlement and entry under the acts of Congress ratifying said agreements, respectively, shall be so opened by proclamation of the President, and to avoid the contests and conflicting claims which have heretofore resulted from opening similar public lands to settlement and entry, the President's proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled thereto under the acts ratifying said agreements, re-

spectively; and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation until after the expiration of sixty days from the time when the same are opened to settlement and entry.

And whereas by the act of Congress last named the President was authorized to establish two additional United States land districts and land offices in the Territory of Oklahoma, to include the land so ceded as aforesaid, which land districts and land offices have been established by an order of even date herewith;

And whereas all of the conditions required by law to be performed prior to the opening of said tracts of land to settlement and entry have been, as I hereby declare, duly performed;

Now, therefore, I, William McKinley, President of the United States of America, by virtue of the power vested in me by law, do hereby declare and make known that all the lands so as aforesaid ceded by the Wichita and affiliated bands of Indians, and the Comanche, Kiowa, and Apache tribes of Indians, respectively, saving and excepting sections sixteen, thirty-six, thirteen, and thirty-three in each township, and all lands located or selected by the Territory of Oklahoma as indemnity school or educational lands, and saving and excepting all lands allotted in severalty to individual Indians, and saving and excepting all lands allotted and confirmed to religious societies and other organizations, and saving and excepting the lands selected and set aside as grazing lands for the use in common for said Comanche, Kiowa, and Apache tribes of Indians, and saving and excepting the lands set aside and reserved at each of said county seats for disposition as town sites, and saving and excepting the lands now

used, occupied, or set apart for military, agency, school, school farm, religious, Indian cemetery, wood reserve, forest reserve, or other public uses, will, on the 6th day of August, 1901, at 9 o'clock a. m., in the manner herein prescribed and not otherwise, be opened to entry and settlement and to disposition under the general provisions of the homestead and town-site laws of the United States.

Commencing at 9 o'clock a. m., Wednesday, July 10, 1901, and ending at 6 o'clock p. m., Friday, July 26, 1901, a registration will be had at the United States land offices at Elreno and Lawton, in the Territory of Oklahoma (the office at Lawton to occupy provisional quarters in the immediate vicinity of Fort Sill, Oklahoma Territory, until suitable quarters can be provided at Lawton), for the purpose of ascertaining what persons desire to enter, settle upon, and acquire title to any of said lands under the homestead law and of ascertaining their qualifications so to do. The registration at each office will be for both land districts, but at the time of registration each applicant will be required to elect and state in which district he desires to make entry. To obtain registration each applicant will be required to show himself duly qualified to make homestead entry of these lands under existing laws and to give the registering officer such appropriate matters of description and identity as will protect the applicant and the Government against any attempted impersonation. Registration can not be effected through the use of the mails or the employment of an agent, excepting that honorably discharged soldiers and sailors entitled to the benefits of section 2304 of the Revised Statutes of the United States, as amended by the act of Congress approved March 1, 1901 (31 Stat., 847), may

present their applications for registration and due proof of their qualifications through an agent of their own selection, but no person will be permitted to act as agent for more than one such soldier or sailor.

No person will be permitted to register more than once or in any other than his true name. Each applicant who shows himself duly qualified will be registered and given a nontransferable certificate to that effect, which will entitle him to go upon and examine the lands to be opened hereunder in the land district in which he elects to make his entry; but the only purpose for which he may go upon and examine said lands is that of enabling him later on, as herein provided, to understandingly select the lands for which he will make entry. No one will be permitted to make settlement upon any of said lands in advance of the opening herein provided for, and during the first sixty days following said opening no one but registered applicants will be permitted to make homestead settlements upon any of said lands, and then only in pursuance of a homestead entry duly allowed by the local land officers, or of a soldier's declaratory statement duly accepted by such officers.

The order in which, during the first sixty days following the opening, the registered applicants will be permitted to make homestead entry of the lands opened hereunder will be determined by drawings for both the El Reno and Lawton districts, publicly held at the United States land office at El Reno, Okla., commencing at 9 o'clock a. m. Monday, July 29, 1901, and continuing for such period as may be necessary to complete the same. The drawings will be had under the supervision and immediate observance of a committee of three persons whose integrity is such as to

make their control of the drawing a guaranty of its fairness. The members of this committee will be appointed by the Secretary of the Interior, who will prescribe suitable compensation for their services. Preparatory to these drawings the registration officers will, at the time of registering each applicant who shows himself duly qualified, make out a card, which must be signed by the applicant, stating the land district in which he desires to make homestead entry, and giving such a description of the applicant as will enable the local land officers to thereafter identify him. This card will be at once sealed in a separate envelope, which will bear no other distinguishing label or mark than such as may be necessary to show that it is to go into the drawing for the land district in which the applicant desires to make entry. These envelopes will be separated according to land districts and will be carefully preserved and remain sealed until opened in the course of the drawing as herein provided.

When the registration is completed, all of these sealed envelopes will be brought together at the place of drawing and turned over to the committee in charge of the drawing, who, in such manner as in their judgment will be attended with entire fairness and equality of opportunity, shall proceed to draw out and open the separate envelopes and to give to each inclosed card a number in the order in which the envelopes containing the same is drawn. While the drawings for the two districts will be separately conducted, they will occur as nearly at the same time as is practicable. The result of the drawing for each district will be certified by the committee to the officers of the district and will determine the order in which the applicants may make homestead entry of said lands and settlement thereon.

Notice of the drawings, stating the name of each applicant and number assigned to him by the drawing, will be posted each day at the place of drawing, and each applicant will be notified of his number by a postal card mailed to him at the address, if any, given by him at the time of registration. Each applicant should, however, in his own behalf, employ such measures as will insure his obtaining prompt and accurate information of the order in which his application for homestead entry can be presented as fixed by the drawing. Applications for homestead entry of said lands during the first sixty days following the opening can be made only by registered applicants and in the order established by the drawing. At each land office, commencing Tuesday, August 6, 1901, at 9 o'clock a. m., the applications of those drawing numbers 1 to 125, inclusive, for that district must be presented and will be considered in their numerical order during the first day, and the applications of those drawing numbers 125 to 250, inclusive, must be presented and will be considered in their numerical order during the second day, and so on at that rate until all of said lands subject to entry under the homestead law, and desired thereunder, have been entered. If any applicant fails to appear and present his application for entry when the number assigned to him by the drawing is reached, his right to enter will be passed until after the other applications assigned for that day have been disposed of, when he will be given another opportunity to make entry, failing in which he will be deemed to have abandoned his right to make entry under such drawing. To obtain the allowance of a homestead entry each applicant must personally present the certificate of registration theretofore issued to him, together with

a regular homestead application and the necessary accompanying proofs, and with the regular land-office fees, but an honorably discharged soldier or sailor may file his declaratory statement through the agent representing him at the registration. The production of the certificate of registration will be dispensed with only upon satisfactory proof of loss or destruction. If at the time of considering his regular application for entry it appear that any applicant is disqualified from making homestead entry of these lands his application will be rejected, notwithstanding his prior registration. If any applicant shall register more than once hereunder, or in any other than his true name, or shall transfer his resignation certificate, he will thereby lose all the benefits of the registration and drawing herein provided for, and will be precluded from entering or settling upon any of said lands during the first sixty days following said opening.

Because of the provision in the said act of Congress approved June 6, 1900, "that the settlers who located on that part of said lands called and known as the 'neutral strip' shall have preference right for thirty days on the lands upon which they have located and improved," the said lands in the "neutral strip" shall for the period of thirty days after said opening be subject to homestead entry and town-site entry only by those who have heretofore located upon and improved the same and who are accorded a preference right of entry for thirty days as aforesaid. Persons entitled to make entry under this preference right will be permitted to do so at any time during said period of thirty days following the opening without previous registration and without regard to the drawing herein provided for, and at the expiration of that period the lands in

said "neutral strip" for which no entry shall have been made will come under the general provisions of this proclamation.

The intended beneficiaries of the provision in the said acts of Congress, approved, respectively, March 2, 1895, and June 6, 1900, which authorizes a qualified entryman having lands adjoining the ceded lands, whose original entry embraced less than 160 acres, to enter so much of the ceded lands as will make his homestead entry contain in the aggregate not exceeding 160 acres, may obtain such an extension of his existing entry, without previous registration and without regard to the drawing herein provided for, only by making appropriate application, accompanied by the necessary proofs, at the proper new land office, at some time prior to the opening herein provided for.

Any person or persons desiring to found, or to suggest establishing, a town site upon any of said ceded lands at any point not in the near vicinity of either of the county seats therein heretofore selected and designated as aforesaid, may, at any time before the opening herein provided for, file in the proper local land office a written application to that effect, describing by legal subdivisions the lands intended to be affected, and stating fully and under oath the necessity or propriety of founding or establishing a town at that place. The local officers will forthwith transmit said petition to the Commissioner of the General Land Office with their recommendation in the premises. Such Commissioner, if he believes the public interests will be subserved thereby, will, if the Secretary of the Interior approve thereof, issue an order withdrawing the lands described in such petition or any portion thereof from homestead entry and settlement and directing that the same be

held for the time being for town-site settlement, entry, and disposition only. In such event the lands so withheld from homestead entry and settlement will, at the time of said opening and not before, become subject to settlement, entry, and disposition under the general town-site laws of the United States. None of said ceded lands will be subject to settlement, entry, or disposition under such general town-site laws except in the manner herein prescribed until after the expiration of sixty days from the time of said opening.

Attention is hereby especially called to the fact that under the special provisions of the said act of Congress approved March 3, 1901, the town sites selected and designated at the county seats of the new counties into which said lands have been formed can not be disposed of under the general town-site laws of the United States, and can only be disposed of in the special manner provided in said act of Congress, which declares:

> The lands so set apart and designated shall, in advance of the opening, be surveyed, subdivided, and platted, under the direction of the Secretary of the Interior, into appropriate lots, blocks, streets, alleys, and sites for parks or public buildings, so as to make a town site thereof: *Provided*, That no person shall purchase more than one business and one residence lot. Such town lots shall be offered and sold at public auction to the highest bidder, under the direction of the Secretary of the Interior, at sales to be had at the opening and subsequent thereto.

All persons are especially admonished that under the said act of Congress approved March 3, 1901, it is provided that no person shall be permitted to settle upon, occupy, or enter any of said ceded lands except in the manner prescribed in this proclamation until after the

expiration of sixty days from the time when the same are opened to settlement and entry. After the expiration of the said period of sixty days, but not before, any of said lands remaining undisposed of may be settled upon, occupied, and entered under the general provisions of the homestead and town-site laws of the United States in like manner as if the manner of effecting such settlement, occupancy, and entry had not been prescribed herein in obedience to law.

It appearing that there are fences around the pastures into which, for convenience, portions of the ceded lands have heretofore been divided, and that these fences are of considerable value and are still the property of the Indian tribes ceding said lands to the United States, all persons going upon, examining, entering, or settling upon any of said lands are cautioned to respect such fences as the property of the Indians, and not to destroy, appropriate, or carry away the same, but to leave them undisturbed, so that they may be seasonably removed and preserved for the benefit of the Indians.

The Secretary of the Interior shall prescribe all needful rules and regulations necessary to carry into full effect the opening herein provided for.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this fourth day of July, in the year of our Lord one thousand nine hundred and one, and of the independence of the United States the one hundred and twenty-sixth.

[SEAL.] WILLIAM MCKINLEY.

By the President:

DAVID J. HILL,

Acting Secretary of State.

NOTICE OF THE ESTABLISHMENT OF TWO ADDITIONAL LAND DISTRICTS AND CHANGE OF BOUNDARIES OF THE OKLAHOMA AND KINGFISHER LAND DISTRICTS, IN THE TERRITORY OF OKLAHOMA.

Notice is hereby given that pursuant to the terms of section 3 of the act of Congress approved March 3, 1901, entitled "An act to supplement existing laws relating to the disposition of land, and so forth," the President of the United States has directed the establishment of the following-named land districts and the location of the offices of said districts at the points named:

FIRST.—*The El Reno land district.*

Shall embrace all that portion of the Territory of Oklahoma beginning at the point of intersection of the first standard parallel north of the Indian meridian with the ninety-eighth degree of longitude west from Greenwich; running thence north on said ninety-eighth degree of west longitude to its intersection with the center line of the main channel of the Canadian River; thence down said river, following the center line of the main channel thereof, to the range line between ranges 6 and 7 west; thence north on said range line between ranges 6 and 7 west to the corner common to townships 13 and 14 north, ranges 6 and 7 west; thence west on the township line between townships 13 and 14 north to its intersection with the center line of the main channel of the Canadian River; thence up said river, following the center line of the main channel thereof, to its intersection with the western boundary line of the Wichita Indian Reservation; thence south on said western boundary line to its intersection with the north boundary line of the Kiowa, Comanche, and Apache Indian Reservation; thence west on said

boundary line to its intersection with the center line of the main channel of the North Fork of the Red River; thence down said river, following the center line of the main channel thereof, to its intersection with the first standard parallel north; thence east on said first standard parallel north to the place of beginning, and the location of the land office of said district shall be at El Reno, in Canadian County, Okla.

SECOND.—*The Lawton land district.*

Shall embrace all that portion of the Territory of Oklahoma beginning at the point of intersection of the first standard parallel north of the Indian meridian with the ninety-eighth degree of longitude west from Greenwich, running thence west on said first standard parallel north to its intersection with the center line of the main channel of the North Fork of the Red River; thence down said river, following the center line of the main channel thereof, to the center line of the main channel of Red River; thence down said river, following the center line of the main channel thereof, to its intersection with the ninety-eighth degree of longitude west from Greenwich; thence north on said ninety-eighth degree of west longitude to the place of beginning; and the location of the land office of said district shall be at Lawton, in Comanche County, Okla.

THIRD.—*Change of boundaries of Oklahoma and Kingfisher districts.*

It is hereby ordered, pursuant to section 2253, Revised Statutes United States, that the following described land be detached from the Oklahoma City district and added to the Elreno district:

Beginning at the point where the ninety-eighth

meridian of west longitude intersects the main channel of the Canadian River; thence following said channel southeastwardly to the point where the range line between ranges 6 and 7 west of the Indian meridian intersects said channel; thence with said range line north to the third standard parallel north; thence along said parallel to the standard corner to townships 13 north, ranges 6 and 7 west; thence with the range line between ranges 6 and 7 west to the township corner to townships 13 and 14 north, ranges 6 and 7 west; thence westwardly with the township line between townships 13 and 14 north to its intersection with the west boundary of the Wichita Indian Reservation; thence southwardly along said west boundary to its intersection with the north boundary of the Kiowa, Comanche, and Apache Indian Reservation; thence eastwardly along said north boundary to its intersection with the ninety-eighth meridian west longitude; thence along said ninety-eighth meridian to the place of beginning.

It is further hereby ordered that the following-described land embraced in the Kingfisher land district be detached from said district and added to the Elreno land district:

Beginning at a point where the township line between townships 13 and 14 north, range 13 west of the Indian meridian, intersects the main channel of the Canadian River; thence following said channel northwestwardly to its intersection with the west boundary of the Wichita Indian Reservation; thence south with said west boundary of the Wichita Indian Reservation to its intersection with the township line between townships 13 and 14 north; thence eastwardly along said township line to the place of beginning.

Given under my hand at the city of Washington this 4th day of July, A. D. 1901.

By order of the President:

BINGER HERMANN,
Commissioner of the General Land Office.

ORDER ESTABLISHING COUNTIES AND COUNTY SEATS.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., June 24, 1901.

Whereas, under agreements ratified by the acts of March 2, 1895 (28 Stat., 895), and June 6, 1900 (31 Stat., 676), certain lands in the Territory of Oklahoma were ceded to the United States by the Wichita and affiliated bands of Indians, and the Kiowa, Comanche, and Apache tribes of Indians, respectively; and whereas, by the act of March 3, 1901 (31 Stat., 1093), it is made the duty of the Secretary of the Interior, before the time for opening them to settlement or entry, to subdivide said lands into such number of counties as will for the time being best subserve the public interests, and to designate the place for the county seat of each county, and to set aside and reserve, at such county seat, for disposition as therein provided, 320 acres of land: *Provided, however*, That the Secretary of the Interior may attach any part of said lands to any adjoining county in said Territory—

Now, therefore, I, Ethan Allen Hitchcock, Secretary of the Interior, in compliance with the duty imposed upon me by the act last above mentioned, do hereby subdivide said lands into three counties and fix and establish their boundaries as follows:

The boundaries of the first of said counties, hereby named Caddo County:

Beginning at the point of intersection of the first

standard parallel north of the Indian base line with the ninety-eighth degree of longitude west from Greenwich, running thence west along said first standard parallel north to the southwest corner of township five north, range thirteen west; thence north on the range line between ranges thirteen and fourteen west, and its offsets, to its intersection with the third standard parallel north; thence east along said third standard parallel north to the center of the main channel of the Canadian River between section two, township twelve north, and section thirty-five, township thirteen north, in range eleven west; thence down said Canadian River, following the center line of the main channel thereof, to the range line between ranges ten and eleven west; thence south on said range line between ranges ten and eleven west to the corner common to townships ten and eleven north, ranges ten and eleven west; thence east on the township line between townships ten and eleven north to the center of the main channel of the Canadian River; thence down said Canadian River, following the center line of the main channel thereof, to the ninety-eighth degree of longitude west from Greenwich; thence south on said ninety-eighth degree of west longitude to the place of beginning.

The boundaries of the second county, hereby named Comanche County:

Beginning at the point of intersection of the first standard parallel north of the Indian base line with the ninety-eighth degree of longitude west from Greenwich, running thence west along said first standard parallel north to the northwest corner of township four north, range fifteen west; thence south on the range line between ranges fifteen and sixteen west to the southwest corner of township one north, range fifteen west;

thence west on the Indian base line to the center of the main channel of the North Fork of the Red River; thence down said North Fork of Red River, following the center line of the main channel thereof, to the center of the main channel of the Red River; thence down said Red River, following the center line of the main channel thereof to the ninety-eighth degree of longitude west from Greenwich; thence north along said ninety-eighth degree of west longitude to the place of beginning.

The boundaries of the third county, hereby named Kiowa County:

Beginning at the southeast corner of township five north, range fourteen west; running thence west on the first standard parallel north to the northeast corner of township four north, range sixteen west; thence south on the range line between ranges fifteen and sixteen west to the Indian base line; thence west on said Indian base line to its intersection with the center of the main channel of the North Fork of the Red River; thence up said North Fork of Red River, following the center line of the main channel thereof to its intersection with the township line between townships seven and eight north; thence east on said township line to its intersection with the center of the main channel of the Washita River; thence down said Washita River, following the center line of the main channel thereof, to the range line between ranges thirteen and fourteen west; thence south on said range line between ranges thirteen and fourteen west to the place of beginning.

In conformity with the provisions of said act of March 3, 1901 (supra), that any part of said lands may be attached to any adjoining county in said Territory, I have attached certain portions of said lands to the

counties of Roger Mills, Washita, and Canadian, which necessitated a change in the boundaries of said counties, so that they now read as follows:

ROGER MILLS COUNTY.

Beginning at the southeast corner of township eight north, range twenty-one west; thence west on the township line between townships seven and eight north to its intersection with the center of the main channel of the North Fork of the Red River; thence up said North Fork of Red River, following the center line of the main channel thereof, to the one hundredth degree of longitude west from Greenwich; thence north on said one hundredth degree of west longitude to its intersection with the township line between townships fourteen and fifteen north; thence east on said township line between townships fourteen and fifteen north to the northeast corner of township fourteen north, range twenty-one west; thence south on the range line between ranges twenty and twenty-one west, with its offsets, to the place of beginning.

WASHITA COUNTY.

Beginning at the northwest corner of township eleven north, range twenty west; thence south on the line between ranges twenty and twenty-one west to the southwest corner of township eight north, range twenty west; thence east on the township line between townships seven and eight north to the center of the main channel of the Washita River; thence down said Washita River, following the center line of the main channel thereof, to the range line between ranges thirteen and fourteen west; thence north, following the line between ranges thirteen and fourteen west, to the

northeast corner of township eleven north, range fourteen west; thence west on the line between townships eleven and twelve north to the place of beginning.

CANADIAN COUNTY.

Beginning at the northwest corner of township fourteen north, range ten west; thence south on the range line between ranges ten and eleven west to the third standard parallel north; thence west on said third standard parallel north to the center of the main channel of the Canadian River; thence down said Canadian River, following the center line of the main channel thereof, to the range line between ranges ten and eleven west; thence south on said range line between ranges ten and eleven west to the corner common to townships ten and eleven north, ranges ten and eleven west; thence east on the township line between townships ten and eleven north to the center of the main channel of the Canadian River; thence down said Canadian River, following the center line of the main channel thereof, to its intersection with the range line between ranges four and five west; thence north on said range line between ranges four and five west to the northeast corner of township fourteen north, range five west; thence west on the township line between townships fourteen and fifteen north, to the place of beginning.

The county seat of Caddo County is hereby named Anadarko, and is located upon the following-described tract of land, containing 320 acres: The SE. $\frac{1}{4}$, the E. $\frac{1}{2}$ of the SW. $\frac{1}{4}$, the SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$, the E. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of sec. 15, and the E. $\frac{1}{2}$ of the SE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of sec. 16, township 7 north, range 10 west, Indian meridian.

The county seat of Comanche County is hereby named Lawton, and is located upon the following-described tract of land, containing 320 acres: The N. ½ of sec. 31, township 2 north, range 11 west.

The county seat of Kiowa County is hereby named Hobart, and is located upon the following-described tract of land, containing 320 acres: The W. ½ of sec. 3, township 6 north, range 18 west.

ETHAN ALLEN HITCHCOCK,
Secretary of the Interior.

(WICHITA FOREST RESERVE.)

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas it is provided by section twenty-four of the act of Congress approved March third, eighteen hundred and ninety-one, entitled "An act to repeal timber-culture laws, and for other purposes," "That the President of the United States may, from time to time, set apart and reserve, in any State or Territory having public land bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and the limits thereof;"

And whereas the public lands in the Territory of Oklahoma, within the limits hereinafter described, are in part covered with timber, and it appears that the

public good would be promoted by setting apart and reserving said lands as a public reservation:

Now, therefore, I, William McKinley, President of the United States, by virtue of the power in me vested by section twenty-four of the aforesaid act of Congress, do hereby make known and proclaim that there is hereby reserved from entry or settlement and set apart as a public reservation all those certain tracts, pieces, or parcels of land lying and being situate in the Territory of Oklahoma, and particularly described as follows, to wit:

Beginning at the southeast corner of township three (3) north, range fourteen (14) west, Indian meridian, Territory of Oklahoma; thence north along the township line to the northeast corner of section twenty-four (24), township three (3) north, range fourteen (14) west; thence east on the section line to the southeast corner of section thirteen (13), township three (3) north, range thirteen (13) west; thence north along the range line between ranges twelve (12) and thirteen (13) west to the northeast corner of the southeast quarter of section twelve (12), township three (3) north, range thirteen (13) west; thence west to the southwest corner of the northwest quarter of section twelve (12), township (3) north, range thirteen (13) west; thence north to the southwest corner of section one (1), township three (3) north, range thirteen (13) west; thence west along the section line between sections two (2) and eleven (11) to the southwest corner of section two (2), township three (3) north, range thirteen (13) west; thence north along the section line between sections two (2) and three (3) to the southeast corner of the northeast quarter of section three (3), township three (3) north, range thirteen (13) west; thence west along the

center line of sections three (3), four (4), five (5), and six (6) to the southwest corner of the northwest quarter of section six (6), township three (3) north, range thirteen (13) west; thence north along the range line between ranges thirteen (13) and fourteen (14) west to the northeast corner of section one (1), township three (3) north, range fourteen (14) west; thence west along the township line between townships three (3) and four (4) north to the northwest corner of section two (2), township three (3) north, range fourteen (14) west; thence north to the northeast corner of section thirty-four (34), township four (4) north, range fourteen (14) west; thence west to the northwest corner of section thirty-four (34), township four (4) north, range fourteen (14) west; thence north to the northeast corner of the southeast quarter of section twenty-one (21), township four (4) north, range fourteen (14) west; thence west to the southwest corner of the northwest quarter of section twenty (20), township four (4) north, range fourteen (14) west; thence north to the northeast corner of section eighteen (18), township four (4) north, range fourteen (14) west; thence west to the northwest corner of section seventeen (17), township four (4) north, range fifteen (15) west; thence south to the southwest corner of section twenty-nine (29), township four (4) north, range fifteen (15) west; thence east to the southeast corner of section twenty-nine (29), township four (4) north, range fifteen (15) west; thence south to the southwest corner of section thirty-three (33), township four (4) north, range fifteen (15) west; thence east to the southeast corner of said section thirty-three (33), township four (4) north, range fifteen (15) west; thence south to the southwest corner of the northwest quarter of section ten

(10), township three (3) north, range fifteen (15) west; thence east to the southeast corner of the northeast quarter of said section ten; thence south to the southwest corner of section twenty-six (26), township three (3) north, range fifteen (15) west; thence east to the southeast corner of said section twenty-six (26); thence south to the southwest corner of the northwest quarter of section thirty-six (36), township three (3) north, range fifteen (15) west; thence east to the center of section thirty-three (33), township three (3) north, range fourteen (14) west; thence south to the southwest corner of the southeast quarter of said section thirty-three (33); thence east along the township line between townships two (2) and three (3) north to the southeast corner of township three (3) north, range fourteen (14) west, the place of beginning.

Warning is hereby expressly given to all persons not to make settlement upon the tract of land reserved by this proclamation.

The reservation hereby established shall be known as the Wichita Forest Reserve.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this fourth day of July, in the year of our Lord one thousand nine hundred and one and of the Independence of the United States the one hundred and twenty-sixth.

[SEAL.] WILLIAM MCKINLEY.

By the President:

DAVID J. HILL,

Acting Secretary of State.

(31 Stat., 672, 676.)

CHAP. 813.—AN ACT To ratify an agreement with the Indians of the Fort Hall Indian Reservation in Idaho, and making appropriations to carry the same into effect.

* * * * *

SEC. 6. Whereas David H. Jerome, Alfred M. Wilson, and Warren G. Sayre, duly appointed commissioners on the part of the United States, did, on the sixth day of October, eighteen hundred and ninety-two, conclude an agreement with the Comanche, Kiowa, and Apache tribes of Indians in Oklahoma, formerly a part of the Indian Territory, which said agreement is in the words and figures as follows:

"Articles of agreement made and entered into at Fort Sill, in the Indian Territory, on the twenty-first day of October, eighteen hundred and ninety-two, by and between David H. Jerome, Alfred M. Wilson, and Warren G. Sayre, commissioners on the part of the United States, and the Comanche, Kiowa, and Apache tribes of Indians in the Indian Territory.

"ARTICLE I.

"Subject to the allotment of land in severalty to the individual members of the Comanche, Kiowa, and Apache tribes of Indians in the Indian Territory, as hereinafter provided for, and subject to the setting apart as grazing lands for said Indians four hundred and eighty thousand acres of land as hereinafter provided for, and subject to the conditions hereinafter imposed, and for the considerations hereinafter mentioned, the said Comanche, Kiowa, and Apache Indians hereby cede, convey, transfer, relinquish, and surrender, forever and absolutely, without any reservation whatever, express or implied, all their claim, title, and

interest of every kind and character, in and to the lands embraced in the following-described tract of country in the Indian Territory, to wit: Commencing at a point where the Washita River crosses the ninety-eighth meridian west from Greenwich; thence up the Washita River, in the middle of the main channel thereof, to a point thirty miles, by river, west of Fort Cobb, as now established; thence due west to the North Fork of Red River, provided said line strikes said river east of the one hundredth meridian of west longitude; if not, then only to said meridian line, and thence due south, on said meridian line, to the said North Fork of Red River; thence down said North Fork, in the middle of the main channel thereof, from the point where it may be first intersected by the lines above described, to the main Red River; thence down said Red River, in the middle of the main channel thereof, to its intersection with the ninety-eighth meridian of longitude west from Greenwich; thence north on said meridian line to the place of beginning.

"ARTICLE II.

"Out of the lands ceded, conveyed, transferred, relinquished, and surrendered by Article I hereof, and in part consideration for the cession thereof, it is agreed by the United States that each member of said Comanche, Kiowa, and Apache tribes of Indians over the age of eighteen (18) years shall have the right to select for himself or herself one hundred and sixty (160) acres of land, to be held and owned in severalty, to conform to the legal surveys in boundary; and that the father, or, if he be dead, the mother, if members of either of said tribe of Indians, shall have the right to select a like amount of land for each of his or her

children under the age of eighteen (18) years; and that the Commissioner of Indian Affairs, or some one by him appointed for the purpose, shall select a like amount of land for each orphan child belonging to either of said tribes under the age of eighteen (18) years.

"ARTICLE III.

"That in addition to the allotment of lands to said Indians as provided for in this agreement, the Secretary of the Interior shall set aside for the use in common for said Indian tribes four hundred and eighty thousand acres of grazing lands, to be selected by the Secretary of the Interior, either in one or more tracts as will best subserve the interest of said Indians. It is hereby further expressly agreed that no person shall have the right to make his or her selection of land in any part of said reservation that is now used or occupied for military, agency, school, school-farm, religious, or other public uses, or in sections sixteen (16) and thirty-six (36), in each Congressional township; except in cases where any Comanche, Kiowa, or Apache Indian has heretofore made improvements upon and now uses and occupies a part of said sections sixteen (16) and thirty-six (36), such Indian may make his or her selection within the boundaries so prescribed so as to include his or her improvements. It is further agreed that wherever in said reservation any Indian, entitled to take lands in severalty hereunder, has made improvements, and now uses and occupies the land embracing such improvements, such Indian shall have the undisputed right to make his or her selection within the area above provided for allotments, so as to include his or her said improvements.

"It is further agreed that said sections sixteen (16) and thirty-six (36) in each Congressional township in said reservation shall not become subject to homestead entry, but shall be held by the United States and finally sold for public school purposes. It is hereby further agreed that wherever in said reservation any religious society or other organization is now occupying any portion of said reservation for religious or educational work among the Indians, the lands so occupied may be allotted and confirmed to such society or organization, not, however, to exceed one hundred and sixty (160) acres of land to any one society or organization, so long as the same shall be so occupied and used; and such land shall not be subject to homestead entry.

"ARTICLE IV.

"All allotments hereunder shall be selected within ninety days from the ratification of this agreement by the Congress of the United States: *Provided*, The Secretary of the Interior, in his discretion, may extend the time for making such selection; and should any Indian entitled to allotments hereunder fail or refuse to make his or her selection of land in that time, then the allotting agent in charge of the work of making such allotments shall within the next thirty (30) days after said time make allotments to such Indians, which shall have the same force and effect as if the selection were made by the Indian.

"ARTICLE V.

"When said allotments of land shall have been selected and taken as aforesaid, and approved by the Secretary of the Interior, the titles thereto shall be held in trust for the allottees, respectively, for the period of

twenty-five (25) years, in the time and manner and to the extent provided for in the act of Congress entitled 'An act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and Territories over the Indians, and for other purposes,' approved February 8, 1887, and an act amendatory thereof, approved February 28, 1891.

"And at the expiration of the said period of twenty-five (25) years the titles thereto shall be conveyed in fee simple to the allottees or their heirs, free from all incumbrances.

"ARTICLE VI.

"As a further and only additional consideration for the cession of territory and relinquishment of title, claim, and interest in and to the lands as aforesaid, the United States agrees to pay to the Comanche, Kiowa, and Apache tribes of Indians in the Indian Territory the sum of two million ($2,000,000) dollars, as follows: Five hundred thousand ($500,000) dollars to be distributed per capita to the members of said tribes at such times and in such manner as the Secretary of the Interior shall deem to be for the best interests of said Indians, which sum is hereby appropriated out of any funds in the Treasury not otherwise appropriated; and any part of the same remaining unpaid shall draw interest at the rate of five per centum while remaining in the Treasury, which interest shall be paid to the Indians annually per capita; and the remaining one million five hundred thousand ($1,500,000) dollars to be retained in the Treasury of the United States, placed to the credit of said Indians, and while so retained to draw interest at the rate of

five per centum per annum, to be paid to the said Indians per capita annually.

"Nothing herein contained shall be held to affect in any way any annuities due said Indians under existing laws, agreements, or treaties.

"ARTICLE VIII.

"It is further agreed that wherever in said reservation any member of any of the tribes of said Indians has, in pursuance of any laws or under any rules or regulations of the Interior Department, taken an allotment, such allotment, at the option of the allottee, shall be confirmed and governed by all the conditions attached to allotments taken under this agreement.

"ARTICLE IX.

"It is further agreed that any and all leases made in pursuance of the laws of the United States of any part of said reservation which may be in force at the time of the ratification by Congress of this agreement shall remain in force the same as if this agreement had not been made.

"ARTICLE X.

"It is further agreed that the following-named persons, not members by blood of either of said tribes, but who have married into one of the tribes, to wit, Mabel R. Given, Thomas F. Woodward, William Wyatt, Kiowa Dutch, John Nestill, James N. Jones, Christian Keoh-tah, Edward L. Clark, George Conover, William Deitrick, Ben Roach, Lewis Bentz, Abilene, James Gardloupe, John Sanchez, the wife of Boone Chandler, whose given name is unknown, Emmit Cox, and Horace P. Jones, shall each be entitled to all the benefits of

land and money conferred by this agreement, the same as if members by blood of one of said tribes, and that Emsy S. Smith, David Grantham, Zonee Adams, John T. Hill, and J. J. Methvin, friends of said Indians, who have rendered to said Indians valuable services, shall each be entitled to all the benefits, in land only, conferred under this agreement, the same as if members of said tribes.

"ARTICLE XI.

"This agreement shall be effective only when ratified by the Congress of the United States."

Said agreement be, and the same hereby is, accepted, ratified, and confirmed as herein amended.

That the Secretary of the Interior is hereby authorized and directed to cause the allotments of said lands provided for in said treaty among said Indians to be made by any Indian inspector or special agent.

That all allotments of said land shall be made under the direction of the Secretary of the Interior to said Indians within ninety days from the passage of this act, subject to the exceptions contained in article four of said treaty: *Provided*, That the time for making allotments shall in no event be extended beyond six months from the passage of this act.

That the lands acquired by this agreement shall be opened to settlement by proclamation of the President within six months after allotments are made and be disposed of under the general provisions of the homestead and town-site laws of the United States: *Provided*, That in addition to the land-office fees prescribed by statute for such entries the entryman shall pay one dollar and twenty-five cents per acre for the land entered at the time of submitting his final proof: *And*

provided further, That in all homestead entries where the entryman has resided upon and improved the land entered in good faith for the period of fourteen months he may commute his entry to cash upon the payment of one dollar and twenty-five cents per acre: *And provided further*, That the rights of honorably discharged Union soldiers and sailors of the late civil war, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, shall not be abridged: *And provided further*, That any person who, having attempted to but for any cause failed to secure a title in fee to a homestead under existing laws, or who made entry under what is known as the commuted provision of the homestead law, shall be qualified to make a homestead entry upon said lands: *And provided further*, That any qualified entryman having lands adjoining the lands herein ceded, whose original entry embraced less than one hundred and sixty acres in all, shall have the right to enter so much of the lands by this agreement ceded lying contiguous to his said entry as shall, with the land already entered, make in the aggregate one hundred and sixty acres, said land to be taken upon the same conditions as are required of other entrymen: *And provided further*, That the settlers who located on that part of said lands called and known as the "neutral strip" shall have preference right for thirty days on the lands upon which they have located and improved.

That sections sixteen and thirty-six, thirteen and thirty-three, of the lands hereby acquired in each township shall not be subject to entry, but shall be reserved, sections sixteen and thirty-six for the use of the common schools, and sections thirteen and thirty-three for university, agricultural colleges, normal schools, and

public buildings of the Territory and future State of Oklahoma; and in case either of said sections, or parts thereof, is lost to said Territory by reason of allotment under this act or otherwise the governor thereof is hereby authorized to locate other lands not occupied in quantity equal to the loss.

That none of the money or interest thereon which is, by the terms of the said agreement, to be paid to said Indians shall be applied to the payment of any judgment that has been or may hereafter be rendered under the provisions of the act of Congress approved March third, eighteen hundred and ninety-one, entitled "An act to provide for the adjudication and payment of claims arising from Indian depredations."

That should any of said lands allotted to said Indians, or opened to settlement under this act, contain valuable mineral deposits, such mineral deposits shall be open to location and entry, under the existing mining laws of the United States, upon the passage of this act; and the mineral laws of the United States are hereby extended over said lands.

That as the Choctaw and Chickasaw nations claim to have some right, title, and interest in and to the lands ceded by the foregoing treaty as soon as the same are abandoned by said Comanche, Kiowa, and Apache tribes of Indians, jurisdiction be, and is hereby, conferred upon the United States Court of Claims to hear and determine the said claim of the Chickasaws and the Choctaws, and to render a judgment thereon, it being the intention of this act to allow said Court of Claims jurisdiction, so that the rights, legal and equitable, of the United States and the Choctaw and Chickasaw nations, and the Comanche, Kiowa, and Apache tribes of Indians in the premises shall be fully considered and determined, and to try and determine all questions that may arise on

behalf of either party in the hearing of said claim; and the Attorney-General is hereby directed to appear in behalf of the Government of the United States; and either of the parties to said action shall have the right to appeal to the Supreme Court of the United States: *Provided*, That such appeal shall be taken within sixty days after the rendition of the judgment objected to, and that the said courts shall give such causes precedence: *And provided further*, That nothing in this act shall be accepted or construed as a confession that the United States admit that the Choctaw and Chickasaw nations have any claim to or interest in said lands or any part thereof.

That said action shall be presented by a single petition making the United States party defendant, and shall set forth all the facts on which the said Choctaw and Chickasaw nations claim title to said land; and said petition may be verified by the authorized delegates, agents, or attorneys of said Indians upon their information and belief as to the existence of such facts, and no other statement or verification shall be necessary: *Provided*, That if said Choctaw and Chickasaw nations do not bring their action within ninety days from the approval of this act, or should they dismiss said suit, and the same shall not be reinstated, their claim shall be forever barred: *And provided further*, That in the event it shall be adjudged in the final judgment or decree rendered in said action that said Choctaw and Chickasaw nations have any right, title, or interest in or to said lands for which they should be compensated by the United States, then said sum of one million five hundred thousand ($1,500,000) dollars shall be subject to such legislation as Congress may deem proper.

Approved, June 6, 1900.

(31 Stat., 727.)

CHAP. 8.—AN ACT making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June thirtieth, nineteen hundred and one, and for other purposes.

* * * * *

For completing the allotments provided for in the agreement with the Comanche, Kiowa, and Apache Indians in Oklahoma, ratified by act approved June sixth, nineteen hundred, including the necessary resurveys, seventy-five thousand dollars, or so much thereof as may be necessary: *Provided*, That the Secretary of the Interior is hereby authorized, in his discretion, to contract with responsible parties for retracing the lines and reestablishing the monuments found necessary in making said allotments; and he is hereby authorized to extend the time for making said allotments and opening of the land to settlement for a period not exceeding eight months from the sixth day of December, nineteen hundred: *Provided further*, That the Secretary of the Interior may temporarily employ such persons as may be necessary to make such allotments.

* * * * *

Approved, January 4, 1901.

(31 Stat., 1093, 1094.)

CHAP. 846.—AN ACT To supplement existing laws relating to the disposition of lands, and so forth.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SECTION 1. That before the time for opening to settlement or entry of any of the lands in the Territory of Oklahoma, respectively ceded to the United States by the Wichita and affiliated bands of Indians, and the Comanche, Kiowa, and Apache tribes of Indians,

under agreements respectively ratified by the acts of March second, eighteen hundred and ninety-five, and June sixth, nineteen hundred, it shall be the duty of the Secretary of the Interior to subdivide the same into such number of counties as will, for the time being, best subserve the public interests, and to designate the place for the county seat of each county, and to set aside and reserve at such county seat, for disposition as herein provided, three hundred and twenty acres of land: *Provided*, That the Secretary of the Interior may attach any part of said lands to any adjoining county in said Territory.

The lands to be opened to settlement and entry under the acts of Congress ratifying said agreements, respectively, shall be so opened by proclamation of the President, and to avoid the contests and conflicting claims which have heretofore resulted from opening similar public lands to settlement and entry, the President's proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled thereto under the acts ratifying said agreements, respectively; and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation until after the expiration of sixty days from the time when the same are opened to settlement and entry.

The lands so set apart and designated shall, in advance of the opening, be surveyed, subdivided, and platted, under the direction of the Secretary of the Interior, into appropriate lots, blocks, streets, alleys, and sites for parks or public buildings, so as to make a town site thereof: *Provided*, That no person shall purchase more than one business and one residence lot. Such town lots shall be offered and sold at public auc-

tion to the highest bidder, under the direction of the Secretary of the Interior, at sales to be had at the opening and subsequent thereto. The receipts from the sale of these lots in the respective county seats shall, after deducting the expenses incident to the surveying, subdividing, platting, and selling of the same, be disposed of under the direction of the Secretary of the Interior in the following manner: A court-house shall be erected therewith at such county seat at a cost of not exceeding ten thousand dollars, and the residue shall be applied to the construction of bridges, roads, and such other public improvements as the Secretary of the Interior shall deem appropriate, including the payment of all expenses actually necessary to the maintenance of the county government until the time for collecting county taxes in the calendar year next succeeding the time of the opening. No indebtedness of any character shall be contracted or incurred by any of said counties prior to the time for collecting county taxes in the calendar year next succeeding the opening, excepting where the same shall have been authorized by the Secretary of the Interior.

SEC. 2. The governor of the Territory shall appoint and commission for each county all county and township officers made necessary by the laws of the Territory of Oklahoma, who shall hold their respective offices until the officers elected by the people at the general election next following the opening shall have qualified.

SEC. 3. The President is hereby authorized to establish two additional United States land districts and land officers in the Territory of Oklahoma, which districts shall include the lands so ceded by the Wichita and affiliated bands of Indians; one of the land offices

shall be located at El Reno, in the county of Canadian, and the other shall be located at the county seat nearest Fort Sill. These land districts shall be respectively established at the time of proclaiming the lands aforesaid open to settlement and entry.

Approved, March 3, 1901.

(32 Stat., 63.)

AN ACT providing for the commutation for town-site purposes of homestead entries in certain portions of Oklahoma.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That that portion of section twenty-two of the act approved May second, eighteen hundred and ninety, entitled "An act to provide a temporary government for the Territory of Oklahoma, to enlarge the jurisdiction of the United States court in the Indian Territory, and for other purposes," providing for the commutation for town-site purposes of homestead entries in certain instances, be, and the same is hereby, made applicable to the lands in the Territory of Oklahoma ceded to the United States by the Wichita and affiliated bands of Indians and the Comanche, Kiowa, and Apache tribes of Indians, under agreements respectively ratified by the acts of Congress of March second, eighteen hundred and ninety-five, and June sixth, nineteen hundred.

Approved, March 11, 1902.

(32 Stat., 506.)

AN ACT to amend an act entitled "An act to supplement existing laws relating to the disposition of lands, and so forth," approved March third, nineteen hundred and one.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section one of the act of Congress approved March

third, nineteen hundred and one, entitled "An act to supplement existing laws relating to the disposition of lands, and so forth," be amended by adding thereto the following:

"*Provided further*, That the Secretary of the Interior be, and he is hereby, authorized, out of the proceeds of the sales of town lots in the towns of Lawton, Comanche County, Anadarko, Caddo County, and Hobart, Kiowa County, in the Territory of Oklahoma, heretofore had pursuant to the authority of the act aforesaid, to cause to be expended, subject to his control and supervision and upon the recommendation of the legally constituted authorities of each of said towns, for the construction of public waterworks, schoolhouses, and such other municipal improvements as may be advisable and advantageous to the inhabitants of said towns, the following additional sums, to wit: For the town of Lawton, one hundred and fifty thousand dollars; for the town of Anadarko, sixty thousand dollars, and for the town of Hobart, fifty thousand dollars: *Provided further*, That the sum of ten thousand dollars, as provided in the act whereof this is amendatory, for the construction of a county court-house in each of the towns aforesaid, shall be, and hereby is, increased to the sum of thirty thousand dollars each for the construction of such county court-houses in each town."

Approved, June 30, 1902.

REPORT OF W. A. RICHARDS, ASSISTANT COMMISSIONER OF THE GENERAL LAND OFFICE, RESPECTING OPENING OF KIOWA, ETC., LANDS IN OKLAHOMA.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 9, 1901.

The SECRETARY OF THE INTERIOR.

SIR: I have the honor to submit the following report respecting the opening to settlement and entry of the Kiowa, Comanche and Apache, and Wichita lands situated in the Territory of Oklahoma, ceded to the United States under agreements respectively ratified by the acts of March 2, 1895, and June 6, 1900.

Acting under instructions dated May 13, 1901, I subdivided the territory embraced in the above named lands into three counties, after having first attached to some of the surrounding counties small portions of the lands more properly belonging to those counties.

The county embracing the lands to the northeast was named Caddo County; the one embracing the lands to the northwest was named Kiowa County, while the one embracing the lands to the south was named Comanche County.

Sites were also selected for the county seats of these new counties, that for Caddo County being in the immediate vicinity of Anadarko station on the Chicago, Rock Island and Pacific Railroad, which was named Anadarko; that for Kiowa County being near the station of Kiowa on the above-named railroad and named Hobart, while the site for the county seat of Comanche

County was located 5 miles south of Fort Sill and named Lawton. These town sites each embraced 320 acres and were surveyed into blocks, lots, streets, and alleys. The surveys of these town sites were made by examiners of surveys detailed from the General Land Office for that purpose.

The location of the boundaries of the three new counties and of the town sites for their respective county seats was completed upon June 11, 1901, and a detailed report of my action in connection therewith was submitted and approved.

The expenses incident to the surveying, subdividing, and platting of the town sites, reimbursable to the Government from the sale of lots by the act of March 3, 1901, were $5,284 24, as set forth in the itemized statement herewith submitted.

REGISTRATION.

In accordance with your letter of June 29, 1901, under which I was instructed to take charge of the prospective opening of the Kiowa, Comanche and Apache, and the Wichita reservations, I proceeded to Elreno, Okla., arriving at 2 o'clock a. m. of July 10, the day upon which registration was to begin.

Under date of July 4, 1901, the Commissioner of the General Land Office, by direction of the President, established two new land districts in Oklahoma—the Elreno land district, which includes the Wichita Reservation and the northern portion of the Kiowa Reservation, with the land office at Elreno, and the Lawton land district, which includes the remaining portion of the Kiowa and the Comanche and Apache reservations, with the land office at Lawton.

By the proclamation of the President of July 4, 1901,

Elreno and Lawton were designated as places of registration, it being provided that the registration at each office should be for both land districts, but that at the time of registration each applicant should be required to elect and state in which district he desired to make entry. It was calculated that under this plan three-fourths of those desiring to make entry would register at Elreno and one-fourth at Lawton, which estimate proved to be practically correct. Thirty-three clerks were detailed from the General Land Office to make the registration, 8 of whom went to Lawton and 25 to Elreno.

The proclamation also provided that the office at Lawton should occupy provisional quarters in the immediate vicinity of Fort Sill until suitable quarters could be provided at Lawton. Under authority obtained from the honorable Secretary of War, the registration for the Lawton district was made at Fort Sill, where a commodious building was furnished for the use of the clerks. The registration at this point was very greatly facilitated by the efficient service rendered by the commanding officer, Maj. G. L. Scott, and the officers and men under his command. A very large proportion of those who registered at Fort Sill came there in wagons and went into camp in the valley of Cache Creek, upon the military reservation. During a portion of the period of registration this camp contained more than 10,000 people. Good order prevailed both in the camp and at the registration booth, which speaks well for the efficiency of those in charge of the registration, the military, and the people themselves.

The registration at this place proceeded in a perfectly orderly manner throughout the entire period, and was

concluded at 6 p. m. of July 26 with a total registration of 29,000, and no qualified applicant was left unregistered at the close of business. Upon the conclusion of the registration the clerks in charge were transported to the railroad station, 30 miles distant, in Government ambulances kindly furnished by Major Scott, and at 5 o'clock a. m. of July 27 reported for duty to me at Elreno.

The clerks who were to make the registration at Elreno reached that place at 2 a. m. of July 10, and at 9 a. m. of that day began the registration at six booths, which had been previously secured and furnished. Four clerks were placed in each booth, to work under the direction of one of their number designated as chief.

Upon the opening of the booths several thousand people were in line before them, some of them having been there more than twenty-four hours. There being a great many women in the lines, I proceeded to secure and furnish a booth to be used exclusively by women, and opened the same at 1 o'clock p. m. of July 10, with two land-office clerks and two clerks temporarily employed, the places of these two clerks in their respective booths being filled by hiring two additional temporary clerks.

The establishment of this booth was heartily indorsed and highly appreciated by the women, of whom about 8,000 were registered there. As they were not prohibited from registering at the other booths, it is estimated that about 2,000 were so registered, making an estimated total of 10,000 women who were registered at Elreno.

Upon July 10, the first day of registration, 4,018 people were registered, which was very satisfactory, all things being considered.

As it was necessary that applications for registration should be sworn to before being presented to the registering clerks, notaries public, clerks of courts, justices of the peace, and others authorized to administer oaths engaged in the business of preparing such papers, at first exorbitant charges were made for such services. To correct this practice I refused to furnish blanks to any officer who would not agree to charge but 25 cents for his services in each case, which resulted in fixing that amount as the general charge. At Fort Sill, where on account of the military supervision the matter could be more easily controlled, the charge was fixed at 10 cents.

Upon July 13, through an accident to the pumping machinery at the waterworks, water was shut off from the mains supplying Elreno with water. The weather was very hot, and there were not less than 15,000 transient people in the city, making the situation one of great seriousness. Unless it could have been remedied at once it would have been necessary to have transferred the registration to some place where there would have been sufficient water. In conference with the city officials, this fact was impressed upon them and it was urged that immediate steps be taken to repair the waterworks. It was also suggested as a means of temporary relief that casks, with drinking cups attached, be placed at convenient places upon the streets and kept filled with water obtained from wells, with a cake of ice in each cask. These suggestions were acted upon without delay, the waterworks were speedily repaired, and the public drinking places provided and found to be so useful that they were maintained during the entire period of registration.

In this connection I take pleasure in stating that

during the registration and the drawing which followed it the people of Elreno put forth every exertion to provide for the comfort and convenience of the strangers who visited their city. There was no raise in the prices of any of the commodities or accommodations necessary to their comfort, and while for thirty days the city contained more than ten times its normal population, there were no hardships nor suffering, but all were well cared for and made comfortable at very reasonable expense.

The registration progressed in an orderly manner, but on account of the applicants being largely in excess of the number which had been expected it became necessary to employ additional assistance. Booth No. 1 was so situated that a greater number of people applied for registration there than at any other point, and the largest number of clerks employed in one place were in this booth. It was used as a training school from which clerks could be taken as needed for use in other booths. By keeping fully informed of the movement of trains upon the railroads entering Elreno I was enabled to so arrange the clerks as to be continually prepared to speedily register the great numbers of people who arrived daily. After the second day no unregistered people were left in front of the booths when they were closed for the night. The time appointed for the opening of the booths was 8 o'clock a. m., but they were frequently opened earlier by the voluntary action of the clerks. The hours of closing were regulated by the number of people who arrived during the day, but 5 o'clock p. m. was the general hour for closing.

Upon Wednesday, July 24, the reports from the railroads and the numbers of people present indicated

that the registration would be unusually large, for which we were fully prepared. Between the hours of 8 a. m. and 12 o'clock noon 11,556 people were registered. As eight heavily loaded trains were due to arrive between 4 and 6 p. m., it was arranged that the booths should be kept open until 8 o'clock or until everybody who so desired had been registered. We were disappointed by the railroads, however, and only two of the trains arrived before 8 o'clock, the total registration for the day being something in excess of 16,000.

Registration was effected by the applicant presenting a sworn statement of his qualifications and his desire to be registered, which was received and filed. A small blank was then filled out with a description of the applicant, the name of the land district in which he desired to make homestead entry, and his post-office address, which he signed, after which he was given a certificate of registration.

Upon July 11 a force of clerks was engaged and, in charge of an experienced clerk, were employed in separating by districts and arranging in alphabetical order the applications and identification cards received at the booths on the preceding day. After having been placed in order, each identification card was compared with its corresponding application, and by this means any errors which might have occurred in the registration were corrected. At the same time a typewritten list was made for each district, embracing the names of those registered for that district, each day's work alphabetically arranged.

The applications, identification cards, and lists for each district were subsequently placed in the respective land offices and afford a means of detecting any frauds

which may have been attempted through double registration or the attempt to impersonate another person in making an entry.

After the first week of registration the applications of soldiers to register by agent became so numerous and so impeded the registration of others that it became necessary to organize a separate booth for the registration of soldiers by soldiers' agents, which booth was placed in charge of an efficient clerk and in which were located the register and receiver of the El Reno office, who rendered faithful and efficient service.

It is believed that the fact that all soldiers' agents were required to register at one booth prevented some designing men from attempting to act as agent for more than one soldier, which they might have done successfully if allowed to register at any of the other booths.

Upon Friday, July 26, registration was closed in every booth simultaneously at 6 o'clock p. m., the chief of each booth having set his watch by city observatory time, in addition to which the city fire bell was struck at that hour. At the time of closing there was no unregistered person in front of any booth in the city.

The total registration at Elreno was 135,416. Upon the first day of the registration there was considerable disorder at several of the booths at this place, the people appearing to have an idea that it was necessary for them to secure and hold their positions in line by force and to take every means to guard their own interests. In a very short time they appeared to become satisfied that they were to receive fair treatment; that there would be no favoritism, and that the entire matter was to be honestly managed, after which there was absolutely no disturbance of any kind in connec-

tion with the registration. In fact, there was very little disorder of any character in the city at any time, notwithstanding its overcrowded condition.

Upon the conclusion of the registration, all of the land-office clerks were immediately employed in placing the identification cards in proper envelopes and sealing the same, which had been delayed until this time by the fact that it was impossible to obtain the envelopes in time to place the cards in them when the registration was made.

I consider that it was an advantage to those who registered that the cards should not have been placed in the envelopes at the same time that the registration was made, as by the delay an opportunity was afforded to compare each identification card with the sworn application, thus affording a complete check upon the registration and a means of correcting any errors that might have been made in the rush of work.

The identification cards were carefully guarded during the day, at the time of registration, by being placed in locked cash boxes through a slit cut for that purpose, no one but myself having a key to any of these boxes. At night these cards were placed in the vault of the Citizens' State Bank, of Elreno, and were taken out only upon my order.

No one but land-office clerks were employed in placing these cards in the envelopes, which was completed about 4 o'clock of Sunday, July 28, this being the only Sunday upon which we found it necessary to work.

THE DRAWING.

By your letter of July 20, 1901, Hon. David P. Dyer, of Missouri, Hon. Frank Dale, of Oklahoma, and myself were appointed a committee to have the supervision

of the drawing to determine the order in which registered applicants would be permitted to make entry in conformity with the President's proclamation of July 4, 1901, of which committee I was appointed chairman.

This committee first met at Elreno on the evening of the 25th day of July, and readily agreed upon the plan by which the drawing should be conducted. In pursuance thereof a platform 32 feet square was erected in one of the streets of the city, fronting the high-school grounds, which rose gradually from the platform, affording ample space for those desiring to witness the drawing. A canvas roof covered the platform and canvas curtains were provided with which to inclose its sides in case of a storm.

Two boxes were constructed in which were to be placed the envelopes containing the names of those who had been registered. Each of these boxes was 10 feet long, 2½ feet deep, and 2½ feet wide, with an iron rod running the entire length through the middle of each box, securely fastened. Iron bolts were placed in either end of the boxes and served as pivots upon which the boxes could be revolved. On one side of each box there were three openings about 2 feet apart for the purpose of receiving the envelopes. On another side of each box there were five holes, each separately numbered, large enough to admit the hand and arm of a person, and through which the envelopes were to be drawn. These holes were covered with slides, except when opened for the purpose of withdrawing an envelope.

On the morning of the 29th of July, at the hour designated in the President's proclamation for the drawing, these boxes were taken upon the platform and placed upon trestles upon which they could be

revolved. The envelopes containing the names of all who had been registered were also brought upon the platform. These envelopes had been separated according to the respective land districts, were of two colors, one being buff and the other white, and bore no distinguishing mark other than the name "Elreno" on those for one district and "Lawton" on those for the other. The envelopes were in pasteboard boxes, each of which contained 400 envelopes, and the boxes for each district were consecutively numbered. Small cards had been prepared bearing numbers corresponding to the numbers upon the envelope boxes, which cards were placed in a receptacle from which they were drawn at random, and the envelope boxes taken in the order in which the cards were drawn and their contents placed in the larger boxes, a portion of each box through each of the three larger openings, and well scattered throughout the entire length of the box.

When all of the envelopes had been thus placed, these openings in the drawing boxes were closed and securely sealed, and the boxes revolved until the envelopes were thoroughly mixed. Ten reputable young men had been selected, all of whom were under age, and therefore not registered and in no wise interested in the drawing, to draw the envelopes from the boxes. These young men were assigned to the holes in these boxes by lot, and it was also determined by lot which one should begin the drawing at each box. The young man at the hole numbered 3 drew the number entitling him to take the first envelope from the Elreno box, and the young man at the hole numbered 4 drew the number entitling him to take the first envelope from the Lawton box, the drawing thereafter to continue in numerical order.

The drawing began with the Elreno box by the young man at hole numbered 3 drawing an envelope, which he handed to Mr. Dale, of the committee, who caused the same to be numbered 1. He then opened the envelope and took therefrom the identification card and caused the same number to be placed upon it, and then handed the card to Mr. Richards, of the committee, who inspected the same and in turn handed it to Mr. Dyer, of the committee, who announced the name and description of the person to the people. This course was followed until 25 envelopes had been drawn from the Elreno box, after which the box was closed and 25 envelopes were drawn from the Lawton box in the same order and disposed of in the same manner, after which this box was closed and both boxes securely sealed and adjournment taken until 2 o'clock p. m.

Great interest was shown by the people in this part of the drawing, and it was estimated that there were not less than 30,000 present to witness it. The location of the stand and the elevation of the grounds surrounding it were such as to enable all to have a fair view of the proceedings. There was no disorder of any kind, and the announcement of the names drawn was received with great applause.

In the afternoon of this day the drawing was continued until 500 names had been drawn from each box, the same order observed in the drawing of the morning being followed, except that instead of the announcement being made from the platform, typewritten lists were prepared, which were taken out into the midst of the audience and read, and then posted upon bulletin boards which had been provided for that purpose.

Provision had been made upon the stand for the accommodation of newspaper reporters, of whom a

large number were in attendance, and to whom manifold copies of these typewritten lists were furnished and by them supplied to their respective newspapers. All of the daily papers of Oklahoma and many of those of the States of Kansas, Missouri, and Texas published complete lists of the names and numbers of the first 6,500 drawn for each land district, thus affording notification to those interested.

While the drawing of names was in progress a force of land-office clerks was engaged in preparing postal-card notices to those whose names had been drawn, which were placed in the post-office upon the evening of that day. This course was followed during the entire drawing of the 6,500 names from each land district, the postal cards being mailed on the same day upon which the names were drawn.

At the close of the first day's drawing the boxes were sealed up and left in charge of some of the land-office clerks and a guard of deputy United States marshals, which course was pursued during the entire period of the drawing.

The drawing was continued upon the platform at the rate of 2,000 per day for each land district until the total of 6,500 envelopes had been drawn for each district, which covered a period of four days. The drawing of this number might have been concluded in a shorter space of time, but it was not deemed advisable, as the number drawn per day was as large as the newspapers could conveniently handle. As it was estimated that there was only a sufficient amount of land in each land district to supply 6,500 entrymen, only that number in each district were notified to appear at the respective land offices upon stated days.

Upon the conclusion of the drawing of these 6,500

names for each land district the boxes were removed to a building where the drawing could be more expeditiously conducted and where it was continued in the same manner, each envelope and identification card being given corresponding numbers. The drawing continued until the afternoon of the 6th of August, when the whole number of envelopes deposited in the two boxes had been separately drawn and numbered.

The postal-card notices for all of the 6,500 names drawn for each land district were mailed by land-office clerks, who exercised great care in this work in order that each one might be properly notified. Upon the conclusion of the mailing of these essential notices a force of clerks were employed, who were nearly all residents of Elreno, and placed in charge of a competent land-office clerk, who proceeded to mail notice of the number drawn by each of the remaining ones in each of the land districts. This was done in accordance with the requirements of the President's proclamation, and was a wise provision, as by it each applicant had the satisfaction of knowing that his name had been placed in the box of the district in which he desired to enter and had been drawn in its order.

The commission duly certified to the land officers at Elreno and Lawton the lists of 6,500 names for each land district drawn from the box, showing the order in which those whose names were drawn might make their homestead entries.

While the greatest interest was shown by the people in the first day's drawing, and a larger number were present that day than upon any subsequent day, a very large number of people remained at Elreno until the conclusion of the drawing of 6,500 names in each district. There was the same good order which had

prevailed throughout the entire period of registration. No dissatisfaction was at any time expressed as to the plan of the drawing or the manner in which it was conducted, but, upon the contrary, both were very generally commended. Even those who met with disappointment in the drawing of numbers had no criticism to offer, but expressed themselves as satisfied that they had been treated with absolute fairness.

SALE OF TOWN SITES.

By your letter of July 19, 1901, I was instructed to take charge of and superintend, subject to the provisions of the act of March 3, 1901, and the regulations contained in said letter, the offering and sale of the town lots in the county-seat town sites of Lawton, Anadarko, and Hobart, in the respective and duly formed counties of Comanche, Caddo, and Kiowa, which instructions were supplemented by your telegram of July 26, 1901, relating to the appointment of commissioners.

Acting under these instructions, I appointed J. R. Hampton as commissioner for the sale of the town site of Lawton, C. F. Nesler as commissioner for the sale of the town site of Anadarko, and E. P. Holcombe as commissioner for the sale of the town site of Hobart, and designated the auctioneers and clerks who were to assist them. These commissioners gave the required bonds, which were approved by the Department, entered upon their duties, and began the sale of the town lots promptly at 9 o'clock of August 6 in each of the three town sites. The sales were continued from day to day without any special incidents worthy of note. There was no occasion to suspend the sales and no evidence of any combination among the bidders to suppress competition or prevent the sale of lots at a

reasonable value, nor was there any disturbance among the bidders or those present which prevented the orderly progress of the sale. All lots purchased were immediately paid for in cash, and the money received therefor was transmitted by each commissioner, without delay, to the subtreasury at St. Louis. Every precaution was taken for the safe-keeping of the money while in the possession of the commissioners. The greatest precaution taken to protect the money received from these sales was at Lawton.

When the sales began at this place, on the 6th of August, the nearest railroad station was Rush Springs, Ind. T., a distance of 30 miles, the road from Lawton to which place ran through an unsettled country. A military escort of 10 cavalrymen, in command of a sergeant, was provided by Major Scott, the commanding officer at Fort Sill; and as it was necessary to make this trip of 30 miles six times a week, it required two details upon the road all the time. Subsequently the Chicago, Rock Island and Pacific Railroad was completed to a point 12 miles north of Fort Sill, at which point an express office was established, after which the funds were taken to that point, and at the conclusion of the sale the road had been completed to Fort Sill.

A guard of cavalrymen was also furnished each day for the protection of the money during the sale and during its transmission from Lawton to Fort Sill, where it was necessary that it should be kept over night, which was also done under guard. The money paid for town lots at Lawton was under a military guard from the time it was paid to the commissioner until it was delivered to the express company. The same was true of the money received from the sale of lots at Anadarko,

a detachment of cavalry being stationed at that place for the purpose of guarding the receipts of the sale of that town site.

There were no troops stationed at Hobart, the protection of the funds received there being provided by deputy United States marshals. The deputies furnished by the United States marshal also rendered very efficient services at Anadarko and Lawton, in conjunction with the military guard. There was no loss of funds of any kind at either of these town sites.

The sales progressed without interruption, every lot in each of the town sites being sold and paid for and the sales concluded within the time prescribed by your instructions. The receipts from the sales of these town sites were as follows:

Town site.	Number of lots.	Total receipts.
Lawton	1,422	$414,845
Anadarko	1,129	188,455
Hobart	1,308	132,733

making the total receipts from the sale of the three town sites $736,033.

The expenses incurred in making the sales of these town sites are as follows:

Lawton	$2,489.62
Anadarko	1,544.53
Hobart	1,797.00
Total	5,831.15

which is a little less than four-fifths of 1 per cent of the total receipts.

Under the authority of your telegram of August 3, 1901, these expenses, which included the pay of the

commissioners, were paid from the receipts of the respective sales, and the net receipts only were deposited in the subtreasury at St. Louis to your credit as trustee for the respective town sites. These amounts so deposited are, respectively, as follows:

Lawton:		
Total receipts	$414,845.00	
Total expenses	2,489.62	
Amount deposited		$412,355.38
Anadarko:		
Total receipts	188,455.00	
Total expenses	1,544.53	
Amount deposited		186,910.47
Hobart:		
Total receipts	132,733.00	
Total expenses	1,797.00	
Amount deposited		130,936.00
Total amount deposited		730,201.85

It is provided in the act of March 3, 1901, that—

> the receipts from the sale of these lots in the respective county seats shall, after deducting the expense incident to the surveying, subdividing, platting, and selling of the same, be disposed of under the direction of the Secretary of the Interior in the following manner, etc.

A statement has heretofore been submitted of the expenses incident to the surveying, subdividing, and platting of the town sites of Lawton, Anadarko, and Hobart. As these town sites embrace the same number of acres, and the expenses incident to their survey were practically the same in each case, no attempt has been made to keep an account with each town site, but the

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expenses incident to their survey are submitted in one account, with the suggestion that in my opinion they should be divided equally between the three town sites, one-third of the gross amount to be charged to each one.

These accounts have all been audited in the General Land Office and paid from the appropriations to which they are properly chargeable.

It appears that the entire amount of expenses so incurred and paid, and which should now be deducted from the receipts of sales of said town lots on account of said expenses, and deposited to the credit of the Treasurer of the United States, is $5,284.24, one-third of which is $1,761.41, which amount it is recommended should be charged against the receipts from the sale of each town site.

If the distribution of expense of survey is made as herein suggested, the net balances to the credit of the town sites will be as follows:

Lawton:			
Gross receipts		$414,845.00	
Less expense of survey	$1,761.41		
Less expense of sale	2,489.62		
Total expense		4,251.03	
Total net receipts			$410,593.97
Anadarko:			
Gross receipts		188,455.00	
Less expense of survey	$1,761.41		
Less expense of sale	1,544.53		
Total expense		3,305.94	
Total net receipts			185,149.06

Hobart:

Gross receipts		$132,733.00
Less expense of survey	$1,761.41	
Less expense of sale	1,797.00	
Total expense		3,558.41
Total net receipts		129,174.59
Total net receipts from sale of three town sites		724,917.62

Great credit is due to the commissioners and those associated with them for the successful manner in which the sales of these town sites were conducted. At the beginning of the sales there were no buildings upon either of the town sites which could be used by the commissioners, and it was necessary that temporary platforms should be erected, upon which the sales were conducted. At Lawton a small building was also constructed, which was occupied by the commissioner and his clerks, while they occupied sleeping apartments and boarded at Fort Sill. At Anadarko the commissioner and his assistants obtained board and lodging at the Indian agency, adjoining the town site, while at Hobart the commissioner and his assistants lived in a tent adjoining the platform upon which the sales were made.

While the time devoted to the sale of lots was from 9 a. m. until 4 p. m., it was necessary that the commissioners and their assistants should begin work much earlier than 9 o'clock, while the making up of their accounts and reports occupied their time for several hours after the sales were closed.

At each one of the town sites it was necessary that the money received from the day's sales should be retained by the commissioner over night, as the express company would not receive it until the following day.

This necessitated a night guard upon the money, and was a constant source of care to the commissioners.

The sales were conducted to the entire satisfaction of those who participated in the purchase of lots, while the amounts received were larger than had been expected. The expenses incident to the survey and the sale were as small as the conditions under which they were made would permit, and the net receipts are sufficient to place each of the new counties upon a good financial basis.

THE ENTRIES.

In accordance with the President's proclamation, the land offices at Elreno and Lawton were duly opened for business upon the qualification of their respective registers and receivers. Prior to August 6, 1901, the business of these officers was principally confined to passing upon applications for reservations for town-site purposes, of which there were seven in the Elreno district and three in the Lawton district which finally received your approval, and to receiving the additional entries of those entrymen having entries adjoining the ceded lands of less than 160 acres. While not so employed the local land officers of these districts were engaged upon the registration in progress at Fort Sill and Elreno, in which they rendered valuable assistance. Upon August 6, at 9 o'clock a. m., these offices were opened for the receipt of entries by those holding numbers entitling them to make homestead entries. Both at Lawton and Elreno buildings suitable for land-office purposes had been erected and furnished.

In addition to the usual supply of blanks, maps, and plats, each office was provided with a map of its district, drawn upon a scale sufficiently large to distinctly show each smallest legal subdivision of land. Each of

these maps was in charge of an experienced land-office clerk and was accessible to those desiring to make entries. As soon as made each entry was marked off upon the map, and thus it constantly showed the land open to entry in that district, which was of very great assistance to the entrymen. In addition to the regular clerks allowed the local land offices, several detailed clerks from the General Land Office were on duty in each of these offices. With this force no difficulty was experienced in receiving and recording the 25 entries per day provided by the proclamation. Those holding low numbers, entitling them to make early entries, generally selected land contiguous to some one of the town sites, preference being given to those designated as county seats. Upon the land adjoining these town sites, and especially at Lawton, large numbers of people had congregated prior to the day of the opening. This unwarranted occupation was not brought to my attention until August 5. As the entries were to begin at 9 o'clock a. m. of August 6, and these occupied lands would be the first applied for, immediate action was necessary. I therefore prepared the following order to the register and receiver of the Lawton office, a copy of which was also filed in the Ehreno office:

> The occupation of the south half of section thirty-one, township two north, range eleven west, or any other portion of the unreserved lands in your district, by any person for purposes of residence, trade, or business, except after having made a legal entry of the same, is in violation of law and the President's proclamation, and gives such persons no rights whatever. You will allow homestead entries of said lands by qualified entrymen, notwithstanding any such occupation. Acknowledge receipt.

A copy of this message was filed in the telegraph office and another mailed, but as both these means of communication were very uncertain, owing to the great pressure of business, another copy was intrusted to a clerk going to Lawton by way of Rush Springs, while a fourth copy was given a clerk going to Anadarko, who placed it in the hands of an Indian courier, who left that place at midnight and made the ride of 40 miles to Lawton before 9 o'clock of August 6. The first two entries made at the Lawton office were for the half section of land mentioned in this order. Several attempts have been made to contest one of these entries upon grounds covered by this order, but all have failed.

The entries at the land offices continued without interruption throughout the prescribed period of sixty days. The numbers of those entitled to make entry each day were called in their order. Anyone failing to respond was passed until after the other applications assigned for that day had been disposed of, when he was again called, both by name and number, and if he still failed to appear he was held to have abandoned his right to make entry under the drawing.

In accordance with your telegraphic regulations of August 5, appeals from the action of the local land officers at Elreno and Lawton rejecting applications to make or amend entries could only be taken within one day, Sundays excepted, after such rejection. When such appeals were taken the papers were immediately forwarded to the General Land Office, where they were at once carefully examined and forwarded to you, with appropriate recommendation, when the cases would be promptly decided and closed.

Applications to contest entries made during this sixty-day period were treated in the same manner.

This course provided an adequate and speedy method of correcting any material errors in the local offices, and it is believed that at the same time it tended to discourage groundless appeals and contests. While there were quite a number of applications to contest entries sent up from each of the local offices, such contests were allowed and hearings ordered in but a comparatively small number of cases in each office. Hearings were ordered only in cases where it was shown beyond a reasonable doubt that the entryman was disqualified at the time of making entry, which fact he had concealed from the land officers, or in some other manner had made what might be termed a fraudulent or illegal entry.

During the entire period occupied in opening these ceded lands to settlement and entry, suits at law were in progress calculated to prevent such opening in whole or in part. Of those brought in Oklahoma, the suits in equity brought by Lone Wolf and others in the district court of Canadian County, Okla., asking that the Government be restrained from disposing of said ceded lands, were, prior to August 6, 1901, decided in favor of the Government. Subsequent to August 6 temporary restraining orders, granted by the probate judge of Canadian County, Okla., against the disposal of certain described tracts on the application of Rebecca Young and other alleged Indians were modified by the district judge of Canadian County, permitting the disposition of said lands, subject to the rights, if any, of the said alleged Indians.

Restraining orders were issued by the probate judge of Canadian County, Okla., on the application of William H. Brintle and ten other alleged settlers on the western boundary of the Wichita Reservation. The

two suits last above mentioned have not been disposed of, but the Attorney-General has directed the United States attorney for the district of Oklahoma to appear for the Government in said cases.

The suits of Lone Wolf and others did not in any wise interfere with the registration, drawing, or disposition of said lands. Those of Rebecca Young and others temporarily prevented the disposition of a small number of tracts, and those of Brintle and others affected less than a dozen claims, and were not filed until near the close of the sixty-day period.

While an itemized statement of the expenses incident to the registration, drawing, and making entries under the proclamation can not be prepared until full reports have been received from the local land officers at Lawton and Elreno, a very close estimate of the same can be made, as follows:

Salaries and per diem of W. A. Richards and 33 detailed clerks during the time engaged in registration, drawing, and making entries (estimated)	$8,271
Railroad fare and necessary traveling expenses of same from Washington, D. C., to Oklahoma and return	3,100
Incidental expenses of registration and drawing, as shown by advances made to the local officers	5,920
Salaries of registers and receivers for two months	2,000
Salaries of 10 local land-office clerks for two months	1,500
Total	20,791

In addition to other fees of which no account is now available, the land offices at Lawton and Elreno received as fees upon the 11,638 homestead entries made during the sixty-day period the sum of $162,932, which sum will be deposited in the Treasury. Deducting from this sum the amount of expenses as estimated, a balance of $142,141 is left to the credit of the Government upon this account. This is a net sum accruing to

the Government in the transaction of the business of opening these ceded lands to settlement and entry.

As showing the financial working of the plan prescribed by the proclamation, it is proper to take into account the net receipts from the sale of the three county-seat town sites, although they will be devoted to public improvements in the respective counties. The net receipts from the town-site sales were $724,917, which, added to $142,141, the net receipts of the homestead entries, makes a total of $867,058 as the net receipts from the opening of these lands up to October 4, 1901, the end of the sixty-day period fixed by the proclamation.

During the first days for making entries there were very few who failed to appear and make entry when their numbers were called. As the entries progressed, however, and good claims became more difficult to find, the proportion of those failing to appear increased. This was not entirely due to a failure to find a desirable piece of land, but partly to the fact that many holding a high number and living at a distance from the land district abandoned the idea of making an entry without visiting the district and making an effort to find an acceptable claim. A few were prevented by sickness from making entry, and several deaths were reported of those holding numbers entitling them to make entry. The entries under the proclamation were concluded at each of the land offices upon October 4, 1901.

At the Lawton office 5,895 entries were made, including soldiers' declaratory statements filed, and 605 either failed to appear or were found to be disqualified.

At the Elreno office 5,743 entries were made, in-

cluding soldiers' declaratory statements filed, and 757 either failed to appear or were found to be disqualified.

There were filed at the Lawton office 243 soldiers' declaratory statements, and 275 such filings were made at the Elreno office. There were 346 women who made entries at the Lawton office and 424 women who made entries at the Elreno office.

During the sixty days prescribed by the proclamation 11,638 filings were made, of which 518 were soldiers' declaratory statements and 770 were made by women, while 1,362 holding numbers entitling them to make entries failed to do so.

The period during which these ceded lands could only be taken in accordance with the President's proclamation ended upon October 4, and reports since received from the Lawton and Elreno land offices are to the effect that the lands remaining open to entry by reason of the failure to make entry of some who were entitled to do so are being rapidly settled upon and entered under the general homestead laws, without confusion or disorder.

In the foregoing statements I have endeavored to report everything of importance pertaining to the action taken under your direction in disposing of these ceded Indian lands in accordance with the acts of Congress pertaining thereto and the President's proclamation. It is believed that the intent and purpose of those acts and of the proclamation have been fully carried out. There has been no complaint of discrimination or unfairness, and there were but little of the hardships and suffering usually encountered in the settlement of a new country. Without strife or contention, but in a quiet, peaceful, and orderly manner, these lands have passed from the condition of an Indian

reservation to that of a populous, thrifty, peaceable agricultural community.

Very respectfully,

W. A. RICHARDS,
Assistant Commissioner.

DEPARTMENT OF THE INTERIOR,
Washington, October 11, 1901.

Hon. W. A. RICHARDS,
Assistant Commissioner of the General Land Office.

DEAR SIR: I am in receipt of your report dated the 9th inst., respecting the opening to settlement and entry of the Kiowa, Comanche, Apache, and Wichita lands, situated in the Territory of Oklahoma, and ceded to the United States under agreements respectively ratified by the acts of March 2, 1895, and June 6, 1900.

I have read your report with care and the greatest satisfaction, and beg to cordially thank you and every member of your staff for the very thorough, economical, and successful manner in which you, with their assistance, conducted and completed the somewhat unusual, extremely laborious work, and for the systematic, businesslike method in which you discharged the duties imposed upon you by the Department, you having made a record which, I trust, will be accepted as a precedent for all future openings of the public domain.

The quiet and orderly manner in which the opening was accomplished is most gratifying, especially when contrasted with the utter disregard of law and order, the outrages, and the contests which characterized the former openings on the "sooner" plan, and the spectacle of 151,000 disappointed applicants quietly retiring

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in favor of the 13,000 successful ones is a characteristic demonstration of the willingness of the American people to respect and obey the law when its enforcement is accomplished by such rules and regulations as to provide an absolute equality of opportunity to all, as was the case in the opening which you have conducted with so much credit as to have also secured the unqualified approval of all who were interested therein.

Again thanking you and your assistants, I remain,

Yours, most respectfully,

E. A. HITCHCOCK,

Secretary.

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In the Supreme Court of the United States.

OCTOBER TERM, 1902.

LONE WOLF, ETC., APPELLANTS,
v.
ETHAN ALLEN HITCHCOCK, ETC., APPELLEES.

No. 275.

ON APPEAL FROM THE COURT OF APPEALS OF DISTRICT OF COLUMBIA.

BRIEF OF APPELLEES ON MOTION TO DISMISS APPEAL.

STATEMENT.

By treaties negotiated in 1867 and proclaimed in 1868 (15 Stat., 581, 589), the United States set apart, for the use and occupancy of the Comanche, Kiowa, and Apache tribes of Indians, certain lands then in the Indian Territory and now in the Territory of Oklahoma.

The combined effect of the acts of Congress of June 6, 1900 (31 Stat., 672, 676), January 4, 1901 (31 Stat., 727), and March 3, 1901 (31 Stat., 1093), the validity of which is assailed in the bill of complaint

and in the appellants' brief, was to amend, in such manner as to Congress seemed to be for the best interests of the Indians and the people of the United States, an agreement negotiated with said tribes, ceding to the United States their right of occupancy in the lands in said reservation, to ratify or enact into law the agreement as so amended, and to require and direct that out of the ceded lands allotments in severalty be made to the individual members of said tribes and to the societies engaged in religious and educational work among the Indians; that out of the lands thus ceded 480,000 acres be selected and set aside for the use in common of the Indians as grazing lands; that the ceded territory be divided into new counties and attached to adjoining counties; that the place for county seat of each new county be designated; that there be set aside and reserved, at each of such county seats, 320 acres for a town site; that these town sites be subdivided, platted, and sold at public vendue, and the net proceeds of such sales be applied to the erection of public improvements and the maintenance of county government in the respective new counties; that two additional land districts be established, to include such ceded lands; that the lands remaining after making allotments, etc., be opened to settlement and entry under the homestead and town-site laws by a proclamation of the President, which should prescribe the manner in which such lands could be settled upon and entered during the first sixty days from the time of the opening.

If the acts of Congress assailed by appellants are valid, then, under the act of March 2, 1895 (28 Stat., 976, 899–900), the Territory of Oklahoma was authorized to make selections from the surplus ceded lands to indemnify it for losses in its school-land grant and to satisfy its other grants for educational purposes, such selections to be made after the making of allotments to the Indians and prior to the opening of the lands to settlement.

And if the legislation assailed by appellants is valid, then, by section 24 of the act of March 3, 1891 (26 Stat., 1095, 1103), and the act of June 4, 1897 (30 Stat., 2, 34–36), the President was authorized to put any of the surplus ceded lands, wholly or in part covered with timber or undergrowth, into public forest reserves as a means of securing favorable conditions of water flow and furnishing a continuous supply of timber for the use and necessity of citizens of the United States.

The only purpose of this suit is to restrain and enjoin the defendants, as public officers, from carrying into effect the said acts of Congress of June 6, 1900, January 4, 1901, and March 3, 1901. No temporary restraining order or injunction was allowed.

As shown by the foregoing motion and the accompanying documents, the matters sought to be restrained and enjoined have been accomplished. Since the rendition of the decree in the supreme court of the District of Columbia the allotments in severalty to the Indians and to the religious and other societies have

been completed, and patents have been issued, preparatory to their delivery, to the several allottees; the selection and setting aside of the required 480,000 acres for the use in common of the Indian tribes as grazing lands have been consummated; the work of subdividing, platting, and selling at public vendue the lots in the town sites of the new counties has been completed; the money arising from such sales has been covered into the Treasury of the United States preparatory to its disbursement in the manner directed; a portion of such money has been so disbursed; two additional land districts have been established to include the ceded territory; the Territory of Oklahoma has made selection of portions of the surplus ceded lands under its school and other educational grants, in conformity with the act of March 2, 1895; the President has put into a public forest reserve a part of the surplus ceded lands; the remaining surplus ceded lands were opened to settlement and entry under the homestead and town-site laws on August 6, 1901, pursuant to the President's proclamation of July 4, 1901, and have since been claimed and entered by homestead and town-site claimants, and the purchasers of town lots at the new county seats and their grantees and the homestead and town-site entrymen of other lands number many thousands and are now occupying the lots and lands purchased and entered by them, respectively, and have improved the same at an aggregate cost of millions of dollars.

Congress has recently further legislated respecting the disposition of the moneys arising from the sale of

lots in such town sites (act of June 30, 1902, 32 Stat., 506), and providing for converting homestead entries of these lands into cash entries for town-site purposes in certain cases (act March 11, 1902, 32 Stat., 63), and under this last act many cash entries have been perfected and some have been carried to patent.

The Indians have also petitioned for and received a per capita payment or distribution of a considerable portion of the purchase price stipulated by the agreement amended and ratified by the act of June 6, 1900, to be paid to them by the United States for the lands thereby ceded.

ARGUMENT.

Since the decree in the supreme court of the District of Columbia the status of the lands in controversy and the position of the parties in interest have so far changed that of the things sought to be restrained and enjoined nothing remains undone the doing of which can now be restrained or enjoined in this suit. Under the positive provisions of the acts of Congress recited, if respected by the President, the opening of these lands to settlement and entry could not be postponed beyond August 6, 1901. The President respected these statutes, and the defendants respected and gave effect to the opinion and action of the President. Every matter sought to be restrained and enjoined has been fully consummated, save that most of the homestead entrymen are still required to complete a fourteen months' or five years' residence, as the case may be, upon the lands entered by them and to make payment

therefor as provided in the act of June 6, 1900, before they can receive full title. They have, however, initiated their claims in the manner provided by law, made the requisite payment of fees, obtained recognition of their claims by the officers of the land department, and have entered upon the actual performance of the conditions upon which the Government offers to give them title.

The Indian allottees other than complainants, the religious and educational allottees, the purchasers of lots at the county-seat town-site sales, and the homestead and town-site entrymen are not parties to this suit and are in no manner charged with notice thereof. No statute or principle of law makes a suit instituted in the courts of the District of Columbia against these defendants, respecting lands in Oklahoma, operate as a *lis pendens* against persons such as these. (Wade on Notice, 2d ed., sec. 354; *Carrington* v. *Brents*, 1 McLean, 167, 175; 5 Fed. Cas., 154, 157; *Shelton* v. *Johnson*, 4 Sneed, 672, 682; *Carr* v. *Lewis Coal Co.*, 15 Mo. App., 551, 558; *Carr* v. *Lewis Coal Co.*, 96 Mo., 149, 155.)

A reversal of the decree of the supreme court of the District of Columbia below will not restore any party in interest to the position occupied by him before the accomplishment of the acts sought to be restrained and enjoined. It will not vacate the Indian allotments or those to the religious and educational societies, and will not vacate the town-lot sales or the homestead and town-site entries. It will not operate to remove pur-

chasers of lots or the homestead or town-site entrymen from the lands in controversy, or operate to restore such lands to the possession of the complainants or other Indians. Nor will a reversal of the decree enable said court, by any further proceedings in this suit, to undo that which has been done. The lands and the persons in interest are all in Oklahoma. The allottees, purchasers, and entrymen can not be reached by the process of the court below, and they have now acquired rights which make them indispensable parties to the granting of any relief in this suit. The case of *Litchfield* v. *Register and Receiver* (9 Wall., 575, 578) is directly in point. See, also, *Maese* v. *Hermann* (17 App. D. C., 52, 64), *New Orleans Water Works Co.* v. *New Orleans* (164 U. S., 471, 480), and *California* v. *Southern Pacific Railway Co.* (157 U. S., 229).

The further prosecution of *this* suit, with the possible object of ascertaining or declaring whether these Indian tribes, under the legislation and circumstances narrated, have a claim for money or damages against the United States, will not be permitted (1) because said tribes are not parties to the suit; (2) because the United States is not a party to the suit; (3) because the court has no jurisdiction of suits of that nature, and (4) because it would be an entire departure from the nature of the suit as originally instituted.

It follows that this appeal presents merely a moot question and that no practical result can come from its present decision.

It is established practice to dismiss an appeal when it appears—

1. That since the decision of the lower court the litigation has been compromised or one of the parties has purchased the right or interest of the other in the subject of the suit.

2. That, in obedience to a writ of *mandamus*, the act in question has been performed and can not by a reversal be undone; or that if a writ of *mandamus* has been refused, such a change has occurred since then as renders performance of the act in question impossible.

3. That since a decision refusing an injunction the act sought to be restrained has been performed, so that a reversal will not restore the parties to the position previously occupied by them.

In *United States ex rel. Riker* v. *Carlisle, Secretary of the Treasury*, decided by the court of appeals of the District of Columbia May 16, 1894 (not reported), the relator sought a writ of *mandamus* in the supreme court of the District against the defendant to compel him to award to relator a proposed issuance of $50,000,000 of bonds, or so much thereof as to the court the relator might seem entitled. The writ was refused, and relator appealed. Afterwards, and upon a showing by the defendant that subsequent to the decision of the lower court all of the bonds had been issued to other parties and paid for, and the money deposited in the Treasury, the court of appeals dismissed the appeal.

Donaldson v. *Wright* (7 App. D. C., 45) was a suit by the former against the latter as Commissioner of Labor, assigned to perform the duties of Superintendent of the Census, to restrain him from printing and publishing a certain bulletin relative to the Five Civilized Tribes

of Indians. In the supreme court of the District a decree was rendered for the defendant. Upon consideration of an appeal to the court of appeals it appeared that the act sought to be restrained had been performed. In that connection the court said, in closing its opinion (pp. 62, 63):

> * * * It is also made to appear to this court, by the affidavit of the defendant, that before the filing of the bill the bulletin complained of had been printed and partly distributed, and that, since the decision appealed from, the remaining numbers of the bulletin, with but small exception, have been distributed as directed by the statute;
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> * * * * *
>
> * * * even if our conclusions in regard to the rights and remedies of the plaintiff were different from what we have stated them to be, this case would be practically ended, for we could not remand the cause for the granting of an injunction to restrain a public official act that has already been done and accomplished. * * *

The cases of *Cleveland* v. *Chamberlain* (1 Black, 419, 426); *Wood Paper Co.*, v. *Heft* (8 Wall., 333, 336); *Dakota County* v. *Glidden* (113 U. S., 222, 225); *San Mateo County* v. *Southern Pacific R. R. Co.* (116 U. S., 138, 142); *East Tennessee, etc., Railroad Co.* v. *Southern Telephone Co.* (125 U. S., 695, 696); *Little* v. *Brown* (134 U. S., 547, 557, 558); *Linn County* v. *Hewitt* (55 Iowa, 505); *People ex rel. Geer* v. *Common Council of Troy* (82 New York, 575, 576), are illustrative of instances in which an appellate court will dismiss an appeal where it ap-

pears that by reason of matters occurring since the decision of the court below no practical results can follow from a determination by the appellate court of the question presented.

In *Singer Manufacturing Co.* v. *Wright, Comptroller* (141 U. S., 696), it appeared that in a suit to restrain the collection of taxes in which an injunction was denied by the lower court, the complainant, pending the appeal, paid the taxes *under protest and by compulsion.* In sustaining a motion to dismiss the appeal, the court said (p. 700):

> * * * The payment of the taxes was, it is true, made under protest, the complainant declaring at the time that they were illegal, and that it was not liable for them; that the payment was made under compulsion of the writs, and that it intended to demand, sue for, and recover back the amounts paid. If this enforced collection and protest were sufficient to preserve to the complainant the right to proceed for the restitution of the money, upon proof of the illegality of the taxes, such redress must be sought in an action at law. It does not continue in existence the equitable remedy by injunction which was sought in the present suit. The equitable ground for the relief prayed ceased with the payment of the taxes. The appeal must therefore be dismissed.

In *California* v. *San Pablo, etc., Railroad Co.* (149 U. S., 308, 314) the court said:

> The duty of this court, as of every judicial tribunal, is limited to determining rights of per-

> sons or of property which are actually controverted in the particular case before it. When, in determining such rights, it becomes necessary to give an opinion upon a question of law, that opinion may have weight as a precedent for future decisions. But the court is not empowered to decide moot questions or abstract propositions, or to declare, for the government of future cases, principles or rules of law which can not affect the result as to the thing in issue in the case before it. No stipulation of parties or counsel, whether in the case before the court or in any other case, can enlarge the power or affect the duty of the court in this regard.

In *People ex rel. Twenty-third Street Railroad Co.* v. *Squire, Commissioner* (110 N. Y., 666), a writ of *mandamus* was issued by the lower court directing the defendant, as commissioner of public works in the city of New York, to issue a permit to relator for the removal of a pavement. The defendant appealed, but pending the appeal the writ was fully executed and the defendant went out of office. The city of New York, which was not a party to the suit, appeared by counsel and asked the appellate court to proceed to a decision and determine the right of the relator to the writ. The court said (p. 667):

> If the city desires to raise the question of the right of relator to occupy the streets, nothing in this litigation restrains it therefrom, and the decision of the question here would not bind the city. We think, therefore, it is not of any practical importance, and the appeal should not be heard or decided upon its merits.

In re Manning, Mayor of Albany (139 N. Y., 446), a peremptory writ of *mandamus* was issued March 6, 1893, by the supreme court at a special term to compel Manning, as mayor, to publish, as required by the laws of 1892, in the official papers of the city, the list of Democratic inspectors of election and poll clerks appointed by the board of election commissioners to serve at the local election, to be held April 11, 1893, for which registration was to be made March 11, 1893. The mayor appealed, and in September, 1893, the general term reversed the order made at the special term, and the petitioner appealed to the court of appeals. It was urged by him that it was necessary to have the question involved decided, as it would arise again. In dismissing the appeal, the court said:

"The statute requires that inspectors and poll clerks shall be appointed at each election. Their power to perform any official duties expires after the election for which the appointment is made has been held. Any decision, therefore, which we can make on this appeal can have no practical effect. If, for instance, we should reverse the order of the general term and affirm that of the special term, as we are asked to do by the appellant, the latter order could not be enforced, as the election has been held and the time and occasion for the inspectors to act has long since expired.

"The appeal does not now present an actual litigation, but an abstract question. The practice of this court has been to refuse to entertain appeals when it is plain that nothing can be accomplished by the decision.

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"* * * This court has uniformly dismissed the appeal when from lapse of time no decision could be made that would be of any practical effect upon the controversy of the parties.

" The demands of actual practical litigation are too pressing to permit the examination or discussion of academic questions, such as the case in its present situation presents. "

The acceptance by the Indians of the benefits conferred upon them by the act of June 6, 1900, and especially their request for and acceptance of a per capita payment of $130,000 of the purchase price for the ceded lands, is a full acquiescence in the legislation complained of, and effectually precludes them from further questioning its validity. This is amply shown by the authorities cited upon pages 90 to 92, inclusive, of appellees' principal brief herein, as well as by the following authorities:

> Bigelow on Estoppel, 2d ed., 509; *Ferguson* v. *Landram*, 5 Bush (Ky.), 230; *Todd* v. *Kerr*, 42 Barb., 319; *People* v. *Murray* et al., 5 Hill, 468.

It is respectfully submitted that the appeal should be dismissed.

WILLIAM C. POLLOCK,
ANTHONY C. CAMPBELL,
Assistant Attorneys.

WILLIS VAN DEVANTER,
Assistant Attorney-General.

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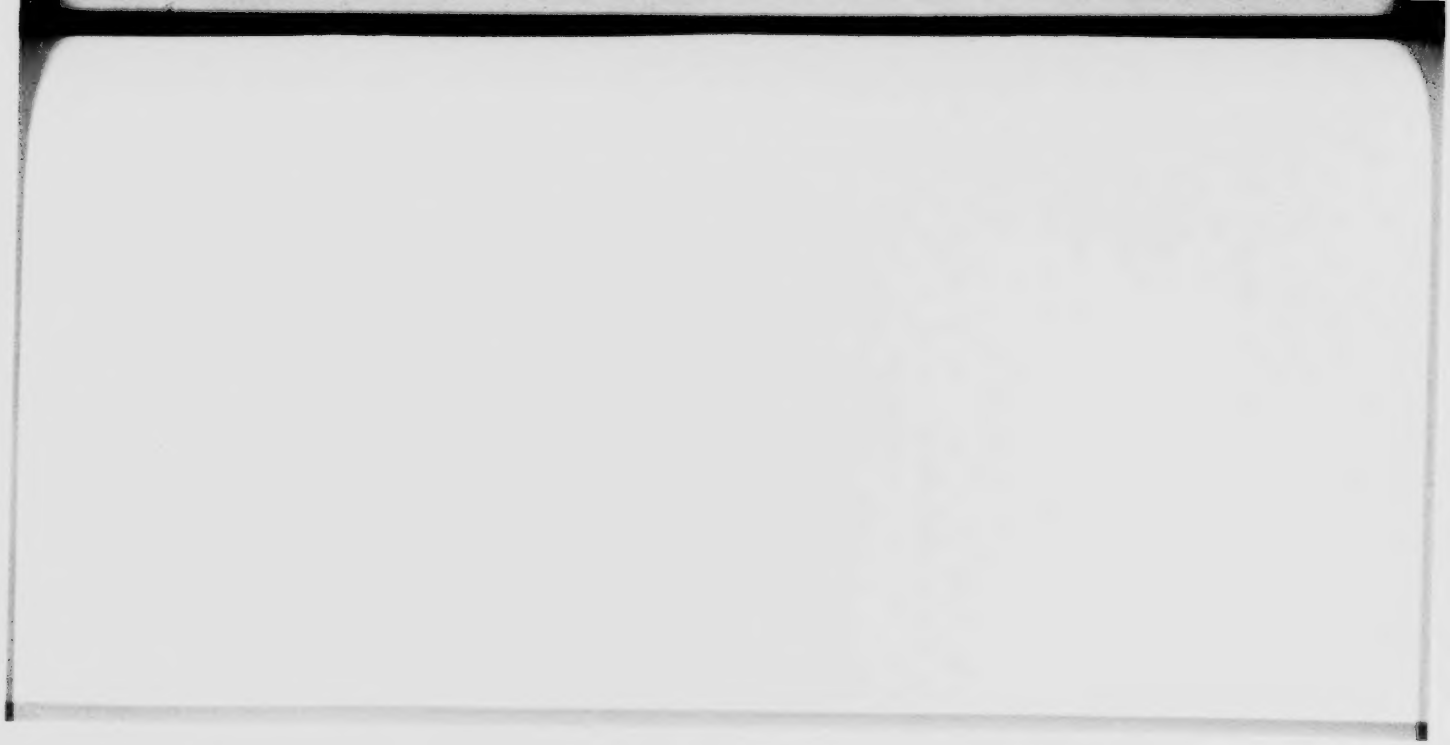

SENATE AND HOUSE DOCUMENTS CITED IN
ARGUMENT IN CASE OF LONE WOLF vs HITCHCOCK,
OCT. TERM, 1902. No. 275.

CONTENTS.

A. 1, 2, 3. Sec. Hitchcock to Prest. of Senate transmitting Memorial of Indians protesting against ratification of Jerome Treaty.

A. 3, 4, 5, 6, 7, 8. Com. Jones' letter to Sec. Hitchcock opposing a Bill to ratify the Jerome Treaty and showing that there was no precedent for such legislation.

A. 8, 9, 10. Memorial of Indians adopted at Mount Scott, Oct. 9, 1899, repudiating Jerome Treaty, and asking Congress "to case it out."

B. 1, 2. Sec. Bliss' letter to Prest. of Senate, showing number of Kiowa, Comanche and Apache Indians.

B. Com. Jones' letter to Sec. Bliss on same subject.

C. Letters of Sec. Hitchcock and Com. Jones on same subject as "A". Senate Doc. 76, 1st 56th.

D. Report of House Committee on Indian Affairs reporting the Jerome Treaty as Amendment to Fort Hall Bill, in which there is no reference to Non-submission to Indians.

E. 1, 2. Letter of Sec. Hitchcock to Speaker transmitting Draft of Cherokee Agreement, in which (Page 2) it is stated no provision is made for submission of same to Indians.

F. 13. Sec. 74 of Cherokee Agreement requiring its submission to Indians for ratification.

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COPY BOUND CLOSE IN CENTER

56TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 76.

MEMORIAL FROM KIOWA, COMANCHE, AND APACHE INDIAN TRIBES.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

A COPY OF A MEMORIAL FROM THE KIOWA, COMANCHE, AND APACHE INDIAN TRIBES, PROTESTING AGAINST THE RATIFICATION OF THE AGREEMENT MADE WITH THEM ON OCTOBER 6, 1892, FOR THE CESSION OF THEIR LANDS, NOW PENDING BEFORE THE SENATE; AND ALSO A LETTER FROM THE COMMISSIONER OF INDIAN AFFAIRS RELATIVE TO SAID MEMORIAL.

JANUARY 15, 1900.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, January 13, 1900.

SIR: Referring to Department report of this date upon Senate resolution of the 14th ultimo, imparting certain information regarding the quantity, nature, and character of the lands of the Kiowa, Comanche, and Apache Reservation, and also as to other matters respecting the Kiowa, Comanche, and Apache Indians, I have the honor to transmit for the further information of the Senate a copy of a memorial from them dated October 9, 1899, protesting against the ratification of the agreement made with them on October 6, 1892, for the cession of their lands, now pending before the Senate, and also a copy of a letter dated the 6th instant, from the Commissioner of Indian Affairs, transmitting and commenting upon the said memorial and the agreement in question, to which the especial attention of the Senate is respectfully invited.

Attention is also invited to the provision in the agreement of 1892 for allotments to the members of the tribes, each member thereof being entitled to 160 acres, "at least one-half" of which shall be grazing land. (See Senate Ex. Doc. No. 17, Fifty-second Congress, second session.) Upon this basis, taking the number of Indians (2,872) now reported to be upon the reservation, 229,760 acres of agricultural lands would be required to make allotments. With but 79,340 acres of such land in the entire reservation—an average of less than 30 acres per head—it can be readily seen how impossible it will be to carry the agreement into effect, if ratified by the Congress.

Attention is also invited to the further fact that provision is also made in the agreement for allotments of 160 acres each to George D. Day and Hugh L. Scott. Mr. Day was the agent for the Indians at the time the agreement was made and Mr. Scott was an officer of the Army and then stationed at Fort Sill, in the reservation. In view of the relations which they sustained to the Indians and the public service, I regard the concessions to them as of singular import and doubtful propriety.

The Indians have almost from the date of the execution of the agreement protested that the matter was misrepresented to them by their interpreters. Whether they were influenced by willful misrepresentation or false translations to sign it or not, they believed they were so imposed upon.

The agreement purports to have been signed by 456 male adult members of the tribes over the age of 21 years, and the agent, Mr. Day, certified that there were 562 male adult members of the tribes constituting the parties to the agreement. Therefore the number who are alleged to have signed the agreement was made to appear to constitute more than three-fourths of the entire adult male membership of the tribes.

No census of these Indians was taken in 1892, but from a roll prepared about the time the agreement was made, or shortly after, which was used in making a payment to them in January and February, 1893 (three to four months after the date of the agreement), it appears that there were 725 males over the age of 18 years, of whom 639 were 21 years and over.

If 18 years and over be held to be the legal age of those who were authorized to sign the agreement, the number who actually signed was 87 less than three-fourths of the adult male membership; and if 21 years be held to be the minimum age, then 23 less than three-fourths signed the agreement. In either event, less than three-fourths of the male adults appear to have so signed. (See Senate Ex. Doc. No. 84, Fifty-fifth Congress, third session.)

It therefore seems that besides willful misrepresentation and false translations to the Indians, as charged, to influence their action and induce them to sign the agreement, that the Department was also misled as to the actual number of adult male Indians in the tribes, and that it was led to believe by the certificate of the agent in charge that the number of those who did sign comprised more than three-fourths of the adult male membership of the tribes, whether 18 years or 21 years be taken as the proper age of signers to give legal effect to the agreement.

The significance of this is found in the twelfth article of the treaty of 1868, which precludes a less number than three-fourths of the adult male members of the tribes from ceding their lands, the language of the treaty being as follows:

> ARTICLE XII. No treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force as against the said Indians, unless executed and signed by at least three-fourths of all the adult male Indians occupying the same, * * * (15 Statutes, 585).

Therefore, because of the inadequacy of the allotments proposed by the agreement to provide support for the Indians by stock raising, which must become their principal industry, and of the improper allotments to Messrs. Scott and Day, and the apparently improper practices in procuring the agreement and false certification as to the signers thereof, I am of the opinion that it should not be ratified. And there

are other reasons for its rejection, equally as potent, which are pointed out by the Commissioner of Indian Affairs in the inclosed copy of his letter of the 5th instant, which have a direct bearing upon the money considerations proposed by the agreement for the benefit of the Indians, which appear to fail to provide proper compensation for the lands ceded.

The attention of the Senate is especially invited to these provisions and the comments thereon by the Commissioner.

Very respectfully,

E. A. HITCHCOCK, *Secretary.*

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 5, 1900.

SIR: This office is in receipt of a communication from Lieut. Col. J. F. Randlett, Indian agent in charge of the Kiowa Agency, Okla., dated December 18, 1899, in which he incloses a memorial from the Kiowas, Comanches, and Apaches, prepared by himself upon request of the chiefs and head men of the tribes. He states that the language is his own, but conforms in every respect to the request of the Indians, as expressed to him through interpreters, and that it was submitted to a general council of all the Indians of the tribes interested, at which council nearly every adult male was present.

He adds that he has no hesitancy in certifying that the document is genuine in every respect, and is the true expression of all whose names are thereto attached.

He also forwards a copy of the names signed to the memorial, with the certificate of the interpreter and agent, the original being filed in the records of the Kiowa Agency.

The memorialists pray that the so-called Jerome treaty, made in September, 1892, may not be ratified by Congress, because those who signed the treaty were misled by those who represented the Government through the interpreters employed by the commissioners appointed to treat with them; that these interpreters led them to believe that if they did not sign the treaty their lands would be taken from them under the provisions of the Dawes law, then in existence, which would be very much more unfavorable to them than was provided in the proposed treaty they were asked to accept; that it was from this assurance, and for no other reason, that they signed the treaty; that this was impressed upon them by their agent at the time, who claimed that he was their best friend, and that if they adopted him into the tribe he was coming to live with them as one of their people, his interests and theirs being alike, and that to sign the treaty would save them from being forced to accept, under the other law, a less number of acres by allotment than they would be given by the terms of the proposed treaty.

They declare that each and every one who signed the treaty would never have signed it if they had not been deceived; that they were not allowed to have any counsel to advise them what was best for them to do, the white people who were on the reservatien being threatened with ejection should they in any way give advice contrary to that given by the commissioners who represented the Government through the interpreters employed by said commissioners; that there are white

men of good repute now living on their reservation by permission of the Indian Department who know this to be true and will make affidavit to the facts that they were threatened with ejectment if they did not advise the Indians to sign the treaty as it was presented to them by the commission; that they now realize that if the treaty is ratified they are doomed to destruction as a people and brought to the same impoverished condition to which the Cheyenne and Arapahoe and other Indian tribes have been brought from the effects of prematurely opening their reservations for the settlement of white men among them; that their lands are not adapted to agricultural purposes, but make excellent grazing pastures for cattle; that all of it they do not need for their own use as homes and grazing their own stock is open for leasing to people who are engaged in the cattle-raising industry of the the country, and that the general public as well as themselves derive more benefit from this condition than would be derived were their lands thrown open for settlement by people who want it for homesteads; that from the lands they now have leased they are enabled to procure many of the comforts of life; that if this revenue is taken from them at this time it will stop the progress they are making in ways of civilization, and blight the hopes they have entertained that the Government would continue to protect their interests until they were fitted to compete with the white man in civilized ways for self support.

They submit that the provisions for lands to be allotted them under treaty are insufficient, because it is evident that they can not, on account of the climate which renders the maturity of crops uncertain, become a successful farming community; and that they, or whoever else occupies these lands, will have to depend upon the cattle industry for revenue and support.

They therefore pray that if they can not be granted the privilege of keeping their reservation under the treaty made with them in 1868, authority be granted for the consideration of a new treaty that will make the allowance of land to be allotted to them sufficient to graze upon it enough stock cattle, the increase from which they can market for the support of themselves and families.

The number of signatures to this memorial is 571.

The agreement with the Kiowa Indians has been pending before Congress since 1892. A bill to ratify and confirm said agreement has been introduced in both the House and Senate at the present session. (H. R. 905; S. 1352.)

The former bill provides for the ratification of the agreement with certain amendments. The latter ratifies the bill with amendments similar in effect, which amendments are written into the agreement. Neither of the bills contains any provision for submitting the amendments to the Indians for their acceptance or rejection.

The preamble of the Senate bill recites that—

> Whereas David H. Jerome, Alfred M. Wilson, and Warren G. Sayre, duly appointed commissioners on the part of the United States, did, on the sixth day of October, eighteen hundred and ninety-two, conclude an agreement with the Comanche, Kiowa, and Apache tribes of Indians in Oklahoma, formerly a part of the Indian Territory, which said agreement, *as amended by this act*, is in words and figures as follows.

This title is misleading, inasmuch as it is not an act to ratify and confirm an agreement, but to *amend* an agreement, without the consent of one of the contracting parties thereto.

It is certainly a novel proposition in law that one party to an agreement may, without the consent of the other, alter or modify an essen-

tial part of such contract. It is apparent that no court of law would uphold or enforce any contract so altered or amended.

In all our dealings with the Indian tribes I do not find that any agreement has ever been "amended" by the Congress without providing for the assent of the Indians interested. In one or possibly two cases Congress has entirely ignored an agreement for the cession of lands upon the ground that the Indians, parties thereto, were not the owners of the lands ceded, but it has never attempted to write in new and different words in a signed agreement without providing that the amendment should be open to rejection or adoption by the Indians interested.

A number of cases are found in the statutes where agreements have been so amended, but in every case provision has been made for resubmitting the agreement as amended for the consideration of the Indians. I mention three such cases:

In ratifying the amendment made by Commissioners John V. Wright, Jared W. Daniels, and Charles F. Larrabee on behalf of the United States with the Indians of the Fort Berthold Agency, Congress amended article 6 of said agreement and provided that—

> This act shall take effect only upon the acceptance of the modification and changes made by the United States as to article 6 of the said agreement by the said tribe of Indians in manner and form as said agreement was assented to, which said acceptance and consent shall be made known by proclamation by the President of the United States upon satisfactory proof presented to him that said acceptance and consent have been obtained in such manner and form. (26 Stats., 1035.)

The agreement between the commissioners on behalf of the United States and the Cherokee Nation, concluded December 19, 1891, which provided for the cession by the said nation to the United States of all the lands known as the "Cherokee Outlet," was ratified with amendments. (27 Stats., 641.)

To provide against the possible contention that the amended agreement was not the contract consented to by the Cherokee Nation, Congress provided—

> That the acceptance by the Cherokee Nation of Indians of any of the money appropriated as herein set forth shall be considered and taken and shall operate as a ratification by said Cherokee Nation of Indians of said agreement as it is hereby proposed to be amended, and as a full and complete relinquishment and extinguishment of all their title, claim, and interest in and to said lands.

As a matter of fact the amendments proposed by Congress in the act of March 3, 1893, were formally concurred in by the Cherokee Nation on April 3, 1893.

The agreement with the Shoshone and Arapahoe tribes of Indians in Wyoming was ratified by section 12 of the act of June 7, 1897 (30 Stats., 93), which section commences as follows:

> That the following amended agreement with the Shoshone and Arapahoe tribes of Indians in the State of Wyoming is hereby accepted, ratified, and confirmed and shall be binding upon said Indians when they shall in the usual manner agree to the amendment herein made thereto.

A further examination of the statutes shows that prior to 1873, when the relations of the Government and the Indian tribes were under treaties, all amendments made by the Senate to treaties presented by the Executive for its consideration were submitted to the Indians for their concurrence before they were deemed to be in effect, and it does not appear anywhere in the statutes, so far as this office has been able to ascertain, that this Government has assumed the authority to change or amend a treaty or agreement with an Indian tribe and to put the

amended or changed agreement or treaty into effect without the consent of the tribe interested.

The sixth article of the agreement signed by the Comanche, etc., Indians, provides as follows:

As a further and only additional consideration for the cession of territory and relinquishment of title, claim, and interest in and to the lands as aforesaid, the United States agrees to pay to the Comanche, Kiowa, and Apache tribes of Indians, in the Indian Territory, the sum of two million ($2,000,000) dollars, as follows: Two hundred thousand ($200,000) dollars in cash, to be distributed per capita among the members of said tribes, within one hundred and twenty (120) days after this agreement shall be ratified by the Congress of the United States; two hundred thousand ($200,000) dollars to be paid out to said Indians under the direction of the Secretary of the Interior in one year after said first payment, and one hundred thousand ($100,000) dollars in the same manner in one year from date of second payment, and the remaining one million five hundred thousand ($1,500,000) dollars to be retained in the Treasury of the United States, placed to the credit of said Indians, and while so retained to draw interest at the rate of five per centum per annum, to be paid to said Indians per capita annually.

The "amended agreement" provides as follows:

As a further and only additional consideration for the cession of territory and relinquishment of title, claim, and interest in and to lands as aforesaid, the United States agrees to pay to the Comanche, Kiowa, and Apache tribes of Indians, in the Indian Territory, the sum of *not exceeding* two million ($2,000,000) dollars, in manner as follows:

As fast as the lands opened for settlement under this act are sold, the money received from such sales shall be covered into the Treasury and placed to the credit of the said Comanche, Kiowa, and Apache tribes of Indians: *Provided*, That no part of said money shall be paid to said Indians until the question of title to the said lands is fully settled between said tribes and the Choctaw and Chickasaw tribes by a suit in the Court of Claims, as hereinafter provided, and said court shall by its decree direct the payment of said two millions of dollars to the tribes entitled to the same, as herein provided.

If it were within the constitutional power of Congress and in accordance w th law and equity to thus amend an agreement, I should strongly object to the above modification, for three reasons:

First. It is a matter of great uncertainty when, if ever, the Indians will receive any compensation for their lands.

By the laws under which they are to be opened settlers are required to pay $1.50 per acre within five years from date of original entry, one-half of which is to be paid within two years.

The Cheyenne and Arapahoe lands were opened to settlement under the same terms something over seven years ago, and not one dollar has yet been paid therefor, as appears from a recent statement of the General Land Office. By the act of July 1, 1898, the time of payment has been extended to July 1, 1900, and the indications are very strong that no payment will ever be made.

Practically the lands are to be taken without consideration.

Second. If the lands *are* paid for there is no certainty that the Comanche, etc., Indians will ever receive one cent.

Should the Supreme Court follow the construction of the Choctaw and Chickasaw treaty adopted by Congress after full deliberation and careful consideration, invoked by the earnest appeal of President Harrison to reconsider its action in directing payment to these nations, as has been done by the Court of Claims as to the Wichita Reservation, the entire $2,000,000 must be paid to the Choctaws and Chickasaws.

But the *rights* of the Comanches, etc., are in no way dependent upon the rights of other tribes.

By the second article of the treaty of October 21, 1867 (15 Stats., 581), the United States agreed that the district of country therein described (as in the agreement) should be set apart for the absolute and

undisturbed use and occupation of the Kiowas and Comanches, and for such other friendly tribes or individual Indians as from time to time they might be willing to admit among them.

By another treaty concluded on the same day (id., 589) with the Kiowas and Comanches, and the Apaches, the latter tribe agreed to be incorporated with the Kiowas and Comanches, who agreed that the Apaches should share in all the benefits of their treaty (first above named).

In the case of the United States *v.* Cook (19 Wall., 591) the Supreme Court held that the right of the Indians to their occupancy is as sacred as that of the United States to the fee, and it was this title that was guaranteed to these Indians by the above treaty. If the United States did not have clear title by which it could convey the right of occupancy to the Indians, it must clear the title in order that it may do so. When the Indians are called upon to part with the sacred right of occupancy, their compensation is in no manner dependent upon the preexisting rights of other parties.

If the United States owes the Choctaws and Chickasaws any amount for these lands, it must pay them; and also the Comanches, etc., for their surrender.

Especially is this so, as it is not claimed or pretended that any amount is due the former so long as the occupancy of the latter continues.

If it should be claimed that Congress has the right to repeal the treaty, the reply is that this right exists only as to cases purely political. It is equally true that Congress has no constitutional power to settle or interfere with rights under treaties, except in such cases. (See Holden *v.* Joy, 17 Wall., 247, and authorities therein cited.) This is distinctly recognized in the Chinese exclusion cases. (130 U. S., 609.)

Third. The "agreement" as amended makes no provision for the payment of the principal or interest to the Indians, except that the court shall by its decree direct the payment of said $2,000,000 to the tribes entitled to the same.

The manner of payment is left in uncertainty.

The act contains a provision (section 6) that should any of the lands allotted to the Indians contain valuable mineral deposits, such deposits shall be open to location and entry under the existing mining laws of the United States, but makes no provision for the allotment of other lands in lieu of those so located, nor for other compensation for such lands.

Even if it be constitutional I do not believe it would be either just or equitable to take away from an allottee the whole or any part of the land which the United States agrees to hold for his exclusive use and benefit, without compensation.

It is of course recognized that the United States does not intend to convey mineral deposits to an allottee, and allots no land known to contain such deposits, but by the subsequent discovery of minerals and their opening to location and entry the allottee is deprived of the use of the land for the purpose for which it was allotted.

I can see no justice in placing the sums received from the sale of such allotted mineral lands to the credit of the Indian tribes, and leaving the allottee without land or other compensation than such as he would possibly receive as his pro rata share of the tribal funds, and which would not be increased by the sale of his entire allotment, the maximum compensation being limited to $2,000,000.

As before remarked, this agreement has been pending for more than six years. In the interest of all concerned it should be finally disposed

of during the present session of Congress. If an amendment be inserted in either of the pending bills, submitting the amended agreement for the acceptance or the rejection of the Indians, or if it should be concluded that it would be the duty of the Department, in case either of the bills should pass in their present form, to submit the matter for consent or rejection by the Indians, I should have no objection to its passage, and am of the opinion that the matter would thus receive final disposition.

In case the amended agreement should be rejected by the Indians, as seems most probable, further negotiations could be had with them, and no doubt an agreement obtained which would be fair to them as well as to the United States.

As shown in office report of December 23, 1899, upon the resolution of the Senate calling for certain information in regard to the Kiowa Reservation, the lands of said reservation are not adapted to agricultural purposes, and should be allotted to the Indians in larger quantities than is provided for in the present agreement.

Although this office has not hitherto definitely opposed the ratification of the agreement in its present form, the result of the investigation made by Special Agent Pray and Agent Randlett is such as to lead it to conclude that the agreement ought not to be ratified. I am therefore of the opinion that the agreement should be rejected by Congress, or that it be ratified with the proposed amendments and submitted to the Indians for their acceptance or rejection.

Two copies of the memorial are herewith transmitted (the signatures being omitted), with the recommendation that they be forwarded to the Senate and House Committees on Indian Affairs with a copy of this report.

Very respectfully, your obedient servant,

W. A. JONES, *Commissioner.*

The SECRETARY OF THE INTERIOR.

KIOWA, COMANCHE, AND APACHE RESERVATION,
Mount Scott, Okla., October 9, 1899.

The COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.:

We, the adult male members of the Kiowa, Comanche, and Apache Indian tribes now residing on our reservation in the Oklahoma Territory, beg that the honorable the Commissioner of Indian Affairs will approve this our petition and have it presented to the Committees of Indian Affairs of both Houses of Congress.

We pray that the so-called Jerome treaty, made with our people in September, 1892, may not be ratified by Congress, because that those of us who signed that treaty were misled by those who represented the Government through the interpreters employed by the commissioners appointed to treat with us. These interpreters led us into the belief that if we did not sign said treaty, our lands would be taken from us under the provisions of a law called the Dawes law, then in existence, which would be very much more unfavorable to us than was provided for us in the proposed treaty we were asked to accept, and it was from this assurance and for no other reason that we signed said treaty. This was impressed upon us by our agent at that time, who claimed he was our best friend, and if we adopted him into our tribe he was com-

ing to live with us as one of our people, and that his interests and ours were alike, and that to sign the treaty would save us from being forced to accept under the other law a less number of acres by allotment than we would be given by the terms of the proposed treaty.

Therefore, each and every one of us who signed that treaty do solemnly declare that if we had not been deceived we would never have signed it. We were not allowed to have any counsel to advise us what was best for us to do, and the white people who were on the reservation at that time were threatened with ejection should they, in any way, give us advice contrary to that which we received from the commissioners who represented the Government through the interpreters employed by said commissioners. There are white men of good repute now living on our reservation, by permission of the Indian Department at Washington, who know this to be true, and will make affidavit to the fact that they were threatened with ejectment if they did not advise us to sign the treaty as it was presented to us by the members of the Jerome Commission.

We now realize that if this treaty is ratified we are doomed to destruction as a people and brought to the same impoverished condition to which the Cheyenne and Arapahoe and other Indian tribes have been brought from the effects of prematurely opening their reservations for the settlement of white men among them. We submit that our lands are not adapted to agricultural purposes, but make excellent grazing pastures for cattle, and that all of it we do not need for our use as homes and grazing our own stock is open for leasing to people engaged in the cattle raising industry of the country, and that the general public, as well as ourselves, derive more benefit from this condition than would be derived were our lands thrown open for settlement by people who want it for homesteads. From the lands we now have leased we are deriving a revenue that enables us to procure many of the comforts of life; if this revenue is taken from us at this time, it will stop the progress we are making in ways of civilization and blight the hopes we have entertained that the Government would continue to protect our interests until we were fitted to compete with the white man in civilized ways for self-support.

We submit that the provision for lands to be allotted to us under this treaty are insufficient, because it is evident we can not, on account of the climate of our section, which renders the maturity of crops uncertain, become a successful farming community; that we, or whoever else occupies these lands, will have to depend upon the cattle industry for revenue and support. And we therefore pray, if we can not be granted the privilege of keeping our reservation under the treaty made with us in 1868, and known as the Medicine Lodge treaty, that authority be granted for the consideration of a new treaty that will make the allowance of land to be allotted to us sufficient for us to graze upon it enough stock cattle the increase from which we can market for support of ourselves and families.

As evidence that this statement is true regarding the inadaptability of the lands of Oklahoma for farming industry, we ask consideration of the fact that to-day there are 6,338,363 acres of land in the Territory, outside of our reservation awaiting entry from people seeking homesteads.

In conclusion, we beg consideration of the fact that we have kept faith with the Government as pledged in the treaty ratified July 25, 1868, and, as a people, we are obedient to the laws of the land; that we are not drunkards, nor do we molest the property of the whites who

have located on lands adjoining ours. We have placed our children in schools provided by the Government and Christian societies; that the several schools, having a capacity for 700 pupils, are kept filled with our children, and that we point to these facts as evidence that we are striving in the right way to fit our people for the day we realize must come, when their children will be dependent upon their own intelligence and physical strength for the support of themselves and their kindred.

We therefore pray that for the reasons we have given herein we may be heard in this, our repudiation of the Jerome treaty, and that Congress will cast it out and not accept it as our free act and deed.

KIOWA AGENCY,
Anadarko, Okla., December 18, 1899.

Interpreter's certificate.

I certify upon honor that I was present at a general council of the Indians of the Kiowa, Comanche, and Apache tribes of the Kiowa, etc., Agency, Okla., held at Mount Scott, Apache, Kiowa and Comanche Indian Reservation, Okla., October 9, 1899, and that the foregoing memorial was adopted and duly signed by all the Indians whose names are attached thereto; that the signatures were attached after the subject of the memorial was duly discussed and understood by all the Indians interested, and that each and every one signed of his own free will with full knowledge of the purport of his act.

OTTO WELLS,
Official Interpreter.

Agent's certificate.

I, James F. Randlett, lieutenant-colonel, U. S. A., United States Indian agent for the Kiowa, etc., Agency, Okla., certify upon honor that the facts stated in the foregoing "Interpreter's certificate" are true.

JAMES F. RANDLETT,
Lieutenant-Colonel, U. S. A., United States Indian Agent.

30195

55TH CONGRESS, 3d Session. SENATE. DOCUMENT No. 84.

NUMBER OF ADULT MALE INDIANS BELONGING TO THE KIOWA, COMANCHE, AND APACHE TRIBES IN OCTOBER, 1892.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

IN RESPONSE TO

RESOLUTION OF THE SENATE OF JANUARY 25, 1899, CALLING FOR NUMBER OF ADULT MALE INDIANS BELONGING TO THE KIOWA, COMANCHE, AND APACHE TRIBES IN OCTOBER, 1892.

JANUARY 28, 1899.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, January 28, 1899.

SIR: I have the honor to be in receipt of the following Senate resolution of the 25th instant:

"*Resolved*, That the Secretary of the Interior is hereby directed to inform the Senate, from the records of his Department, what was the total number of adult male Indians belonging to the Kiowa, Comanche, and Apache tribes of Indians in October, eighteen hundred and ninety-two, and whether the signatures attached to the agreement made with said Indians at said date comprises three-fourths of such adult males of said tribes.

The records of the department fail to show a census of these Indians for the year 1892.

From a roll used in making a payment to them in January and February, 1893, it appears that there were 725 males over 18 years of age, of whom 639 were 21 years and over.

Article 2 of the agreement of 1892 provided that "each member of the said Comanche, Kiowa, and Apache tribes of Indians over eighteen years of age shall have the right to select for himself or herself one hundred and sixty (160) acres of land, to be held and owned in severalty, * * *."

It appears that 456 Indians signed the agreement in question.

If 18 years and over be held to be the legal age of those who were authorized to sign the agreement, the number of persons who actually signed was 87 less than three-fourths of the adult male membership of the tribes; and if 21 years be held to be the minimum age, then 23 less

than three-fourths signed the agreement. In either event, less than three fourths of the male adults appear to have so signed.

I transmit a copy of a report on the subject from the Commissioner of Indian Affairs, dated the 27th instant.

Very respectfully,

C. N. BLISS, *Secretary.*

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 27, 1899.

SIR: I have the honor to acknowledge the receipt, by your reference of the 25th instant, for immediate report, in duplicate, of Senate resolution calling for information as to the total number of adult male Indians belonging to the Kiowa, Comanche, and Apache tribes in October, 1892, etc.

In reply, I have the honor to state that there is no census roll of these Indians for the year 1892 on file in this office. The best information this office can furnish in the matter is obtained from a pay roll containing the names of the Indians belonging to the said tribes, paid in January and February, 1893, and which shows 639 males 21 years of age and over and 725 males 18 years of age and over.

It appears from the records that 456 Indians signed the agreement for the cession of certain lands in the Territory of Oklahoma.

Article 2 of the said agreement provides "* * * that each member of the said Comanche, Kiowa, and Apache tribes of Indians over the age of eighteen (18) years shall have the right to select for himself or herself one hundred and sixty (160) acres of land, to be held and owned in severalty, * * *."

If 21 is to considered the legal age, the records show that the 456 Indians who signed the agreement were 23 less than three fourths of the 639 males 21 years of age and over, as shown by the pay rolls. If 18 is to be considered the legal age, as provided in article 2 of the agreement, the records show that the 456 Indians who signed the agreement were 87 less than three fourths of the 725 males 18 years of age and over, as shown by the pay roll.

The certificate of Mr. George D. Day, United States Indian agent in charge of Kiowa Agency (p. 23, vol. 44, Miscellaneous Indian Documents, Fifty-second Congress, second session), under date of October 21, 1892, gives the number of adult male Indians at that time as 562. There is, however, no information obtainable from the files of this office by which the certificate of Mr. Day can be verified.

The paper inclosed with your letter is herewith returned, as requested.

Very respectfully,

W. A. JONES,
Commissioner.

The SECRETARY OF THE INTERIOR.

56TH CONGRESS, 1st Session. HOUSE OF REPRESENTATIVES. DOCUMENT No. 333.

MEMORIAL FROM KIOWA, COMANCHE, AND APACHE INDIAN TRIBES.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

A COPY OF A MEMORIAL FROM THE KIOWA, COMANCHE, AND APACHE INDIANS, ENTERING A PROTEST AGAINST THE RATIFICATION OF AN AGREEMENT FOR THE CESSION OF THEIR LANDS.

JANUARY 23, 1900.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, January 22, 1900.

SIR: I have the honor to transmit for the information of the House of Representatives a copy of a memorial from the Kiowa, Comanche, and Apache Indians, dated October 9, 1899, entering a protest against the ratification of the agreement made with them on October 6, 1892, for the cession of their lands, which agreement is pending before the Congress.

In transmitting a copy of this memorial to the Senate, on the 13th instant, attention was invited to the provision in the aforesaid agreement of 1892 for allotments to the members of the tribes, whereby each member thereof was declared to be entitled to 160 acres, "at least one-half" of which shall be grazing land (Senate Ex. Doc. No. 17, Fifty-second Congress, second session), and to the fact that upon the basis of the number of Indians (2,872) reported to be upon the reservation 229,760 acres would be required to make allotments; also that as but 79,340 acres of such lands are reported upon the entire reservation, an average of less than 30 acres per head, it could be readily seen how impossible it will be to carry the agreement into effect if ratified by the Congress.

Attention was also called to the fact that provision was made in the agreement for allotments of 160 acres each to George D. Day and Hugh L. Scott, Mr. Day being the agent for the Indians at the time the agreement was made and Mr. Scott an officer of the Army, then stationed at Fort Sill on the reservation, and the opinion expressed that, in view

of the relations which they sustained to the Indians and the public service, the concessions to them were of doubtful propriety.

Other matters relating to the Indians and to the execution of the agreement of 1892 were discussed, which are of such especial importance to them and have such direct bearing upon the questions under consideration that I deem it proper to repeat the following from my communication of the 13th instant to the Senate and to renew the recommendation made to that body:

The Indians have, almost from the date of the execution of the agreement, protested that the matter was misrepresented to them by their interpreters. Whether they were influenced by wilful misrepresentation or false translations to sign it or not, they believe they were so imposed upon.

The agreement purports to have been signed by 456 male adult members of the tribes, over the age of 21 years, and the agent, Mr. Day, certified that there were 562 male adult members of the tribes constituting the parties to the agreement. Therefore the number who are alleged to have signed the agreement was made to appear to constitute more than three-fourths of the entire adult male membership of the tribes.

No census of these Indians was taken in 1892, but from a roll prepared about the time the agreement was made, or shortly after, which was used in making a payment to them in January and February, 1893 (three to four months after the date of the agreement), it appears that there were 725 males over the age of 18 years, of whom 639 were 21 years and over.

If 18 years and over be held to be the legal age of those who were authorized to sign the agreement, the number who actually signed was 87 less than three-fourths of the adult male membership; and if 21 years be held to be the minimum age, then 23 less than three-fourths signed the agreement. In either event, less than three-fourths of the male adults appear to have so signed. (See Senate Ex. Doc. No. 81, Fifty-fifth Congress, third session.)

It therefore seems that besides willful misrepresentation and false translations to the Indians, as charged, to influence their action and induce them to sign the agreement, that the Department was also misled as to the actual number of adult male Indians in the tribes, and that it was led to believe by the certificate of the agent in charge that the number of those who did sign comprised more than three-fourths of the adult male membership of the tribes, whether 18 years or 21 years be taken as the proper age of signers to give legal effect to the agreement.

The significance of this is found in the twelfth article of the treaty of 1868, which precludes a less number than three-fourths of the adult male members of the tribes from ceding their lands, the language of the treaty being as follows:

"ARTICLE XII. No treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force as against said Indians, unless executed and signed by at least three-fourths of all the adult male Indians occupying the same, * * * (15 Stats., 585)."

Therefore, because of the inadequacy of the allotments proposed by the agreement to provide support for the Indians by stock raising, which must become their principal industry, and of the improper allotments to Messrs. Scott & Day, and the apparently improper practices in procuring the agreement and false certification as to the signers thereof, I am of the opinion that it should not be ratified. And there are other reasons for its rejection, equally as potent, which are pointed out by the Commissioner of Indian Affairs in the inclosed copy of his letter of the 5th instant, which have a direct bearing upon the money considerations proposed by the agreement for the benefit of the Indians, which appear to fail to provide proper compensation for the lands ceded.

A further report was made to the Senate on the same date in answer to its resolution of December 14, 1899, calling for certain information regarding the quantity, nature, and character of the lands of the Kiowa, Comanche, and Apache Reservation, to which attention is invited (Senate Doc. No. 75, Fifty-sixth Congress, first session), as well as to the inclosed copy of a letter from the Commissioner of Indian Affairs, dated the 5th instant, which deserves serious consideration.

Very respectfully,

E. A. HITCHCOCK,
Secretary

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 5, 1900.

SIR: This office is in receipt of a communication from Lieut. Col. J. F. Randlett, Indian agent in charge of the Kiowa Agency, Okla., dated December 18, 1899, in which he incloses a memorial from the Kiowas, Comanches, and Apaches, prepared by himself upon request of the chiefs and headmen of the tribes. He states that the language is his own, but conforms in every respect to the request of the Indians, as expressed to him through interpreters, and that it was submitted to a general council of all the Indians of the tribes interested, at which council nearly every adult male was present.

He adds that he has no hesitancy in certifying that the document is genuine in every respect and is the true expression of all whose names are thereto attached.

He also forwards a copy of the names signed to the memorial, with the certificate of the interpreter and agent, the original being filed in the records of the Kiowa Agency.

The memorialists pray that the so-called Jerome treaty, made in September, 1892, may not be ratified by Congress because those who signed the treaty were misled by those who represented the Government through the interpreters employed by the Commissioners appointed to treat with them; that these interpreters led them to believe that if they did not sign the treaty their lands would be taken from them under the provisions of the Dawes law, then in existence, which would be very much more unfavorable to them than was provided in the proposed treaty they were asked to accept; that it was from this assurance, and for no other reason, that they signed the treaty; that this was impressed upon them by their agent at the time, who claimed that he was their best friend, and that if they adopted him into the tribe he was coming to live with them as one of their people, his interests and theirs being alike, and that to sign the treaty would save them from being forced to accept, under the other law, a less number of acres by allotment than they would be given by the terms of the proposed treaty.

They declare that each and every one who signed the treaty would never have signed it if they had not been deceived; that they were not allowed to have any counsel to advise them what was best for them to do, the white people who were on the reservation being threatened with ejection should they in any way give advice contrary to that given by the Commissioners who represented the Government through the interpreters employed by said Commissioners; that there are white men of good repute now living on their reservation by permission of the Indian Department who know this to be true and will make affidavit to the facts that they were threatened with ejectment if they did not advise the Indians to sign the treaty as it was presented to them by the commission; that they now realize that if the treaty is ratified they are doomed to destruction as a people, and brought to the same impoverished condition to which the Cheyenne and Arapaho and other Indian tribes have been brought from the effects of prematurely opening their reservations for the settlement of white men among them; that their lands are not adapted to agricultural purposes, but make excellent grazing pastures for cattle; that all of it they do not need for their own use as homes and grazing their own stock is open for leasing to people who are engaged in the cattle-raising industry of the country, and that the general public as well as themselves derive more benefit from this condition than would be derived were their lands thrown open for

settlement by people who want it for homesteads; that from the lands they now have leased they are enabled to procure many of the comforts of life; that if this revenue is taken from them at this time it will stop the progress they are making in ways of civilization, and blight the hopes they have entertained that the Government would continue to protect their interests until they were fitted to compete with the white man in civilized ways for self-support.

They submit that the provisions for lands to be allotted them under treaty are insufficient, because it is evident that they can not, on account of the climate which renders the maturity of crops uncertain, become a successful farming community, and that they, or whoever else occupies these lands, will have to depend upon the cattle industry for revenue and support.

They therefore pray that if they can not be granted the privilege of keeping their reservation under the treaty made with them in 1868, authority be granted for the consideration of a new treaty that will make the allowance of land to be allotted to them sufficient to graze upon it enough stock cattle the increase from which they can market for the support of themselves and families.

The number of signatures to this memorial is 571.

The agreement with the Kiowa Indians has been pending before Congress since 1892. A bill to ratify and confirm said agreement has been introduced in both the House and Senate at the present session. (H. R. 905, S. 1352.)

The former bill provides for the ratification of the agreement with certain amendments. The latter ratifies the bill with amendments similar in effect, which amendments are written into the agreement. Neither of the bills contains any provision for submitting the amendments to the Indians for their acceptance or rejection.

The preamble of the Senate bill recites that—

> Whereas David H. Jerome, Alfred M. Wilson, and Warren G. Sayre, duly appointed commissioners on the part of the United States, did, on the sixth day of October, eighteen hundred and ninety-two, conclude an agreement with the Comanche, Kiowa, and Apache tribes of Indians in Oklahoma, formerly a part of the Indian Territory, which said agreement, *as amended by this act*, is in words and figures as follows.

This title is misleading, inasmuch as it is not an act to ratify and confirm an agreement, but to *amend* an agreement, without the consent of one of the contracting parties thereto.

It is certainly a novel proposition in law that one party to an agreement may, without the consent of the other, alter or modify an essential part of such contract. It is apparent that no court of law would uphold or enforce any contract so altered or amended.

In all dealings with the Indian tribes I do not find that any agreement has ever been "amended" by the Congress without providing for the assent of the Indians interested. In one or possibly two cases Congress has entirely ignored an agreement for the cession of lands upon the ground that the Indians, parties thereto, were not the owners of the lands ceded, but it has never attempted to write in new and different words in a signed agreement without providing that the amendment should be open to rejection or adoption by the Indians interested.

A number of cases are found in the statutes where agreements have been so amended, but in every case provision has been made for resubmitting the agreement as amended for the consideration of the Indians. I mention three such cases:

In ratifying the agreement made by Commissioners John V. Wright,

Jared W. Daniels, and Charles F. Larrabee, on behalf of the United States, with the Indians of the Fort Berthold Agency, Congress amended article 6 of said agreement, and provided that—

> This act shall take effect only upon the acceptance of the modification and changes made by the United States as to article 6 of the said agreement by the said tribe of Indians, in manner and form as said agreement was assented to, which said acceptance and consent shall be made known by proclamation by the President of the United States upon satisfactory proof presented to him that said acceptance and consent have been obtained in such manner and form. (26 Stats., 1035.)

The agreement between the commissioners on behalf of the United States and the Cherokee Nation, concluded December 19, 1891, which provided for the cession by the said nation to the United States of all the lands known as the "Cherokee Outlet," was ratified with amendments. (27 Stats., 641.)

To provide against the possible contention that the amended agreement was not the contract consented to by the Cherokee Nation, Congress provided—

> That the acceptance by the Cherokee Nation of Indians of any of the money appropriated as herein set forth shall be considered and taken, and shall operate as a ratification by said Cherokee Nation of Indians of said agreement as it is hereby proposed to be amended, and as a full and complete relinquishment and extinguishment of all their title, claim, and interest in and to said lands.

As a matter of fact the amendments proposed by Congress in the act of March 3, 1893, were formally concurred in by the Cherokee Nation on April 3, 1893.

The agreement with the Shoshone and Arapaho tribes of Indians in Wyoming was ratified by section 12 of the act of June 7, 1897 (30 Stats., 93), which section commences as follows:

> That the following amended agreement with the Shoshone and Arapaho tribes of Indians in the State of Wyoming is hereby accepted, ratified, and confirmed, and shall be binding upon said Indians when they shall in the usual manner agree to the amendment herein made thereto.

A further examination of the statutes show that prior to 1873, when the relations of the Government and the Indian tribes were under treaties, all amendments made by the Senate to treaties presented by the Executive for its consideration were submitted to the Indians for their concurrence before they were deemed to be in effect, and it does not appear anywhere in the statutes, so far as this office has been able to ascertain, that this Government has assumed the authority to change or amend a treaty or agreement with an Indian tribe, and to put the amended or changed agreement or treaty into effect without the consent of the tribe interested.

The sixth article of the agreement signed by the Comanche, etc., Indians, provides as follows:

> As a further and only additional consideration for the cession of territory and relinquishment of title, claim, and interest in and to the lands as aforesaid, the United States agrees to pay to the Comanche, Kiowa, and Apache tribes of Indians, in the Indian Territory, the sum of two million ($2,000,000) dollars, as follows: Two hundred thousand ($200,000) dollars in cash, to be distributed per capita among the members of said tribes within one hundred and twenty (120) days after this agreement shall be ratified by the Congress of the United States; two hundred thousand ($200,000) dollars to be paid out to said Indians under the direction of the Secretary of the Interior in one year after said first payment, and one hundred thousand ($100,000) dollars in the same manner in one year from date of second payment, and the remaining one million five hundred thousand ($1,500,000) dollars to be retained in the Treasury of the United States, placed to the credit of said Indians, and while so retained to draw interest at the rate of five per centum per annum, to be paid to said Indians per capita annually.

The "amended agreement" provides as follows:

As a further and only additional consideration for the cession of territory and relinquishment of title, claim, and interest in and to lands as aforesaid, the United States agrees to pay to the Comanche, Kiowa, and Apache tribes of Indians, in the Indian Territory, the sum of *not exceeding* two million ($2,000,000) dollars, in manner as follows:

As fast as the lands opened for settlement under this act are sold, the money received from such sales shall be covered into the Treasury and placed to the credit of the said Comanche, Kiowa, and Apache tribes of Indians: *Provided*, That no part of said money shall be paid to said Indians until the question of title to the said lands is fully settled between said tribes and the Choctaw and Chickasaw tribes by a suit in the Court of Claims, as hereinafter provided; and said court shall by its decree direct the payment of said two millions of dollars to the tribes entitled to the same as herein provided.

If it were within the constitutional power of Congress and in accordance with law and equity to thus amend an agreement, I should strongly object to the above modification for three reasons:

First. It is a matter of great uncertainty when, if ever, the Indians will receive any compensation for their lands.

By the laws under which they are to be opened settlers are required to pay $1.50 per acre within five years from date of original entry, one-half of which is to be paid within two years.

The Cheyenne and Arapahoe lands were opened to settlement under the same terms something over seven years ago, and not one dollar has yet been paid therefor, as appears from a recent statement of the General Land Office. By the act of July 1, 1898, the time of payment has been extended to July 1, 1900, and the indications are very strong that no payment will ever be made.

Practically the lands are to be taken without consideration.

Second. If the lands *are* paid for there is no certainty that the Comanche, etc. Indians will ever receive one cent.

Should the Supreme Court follow the construction of the Choctaw and Chickasaw treaty, adopted by Congress after full deliberation and careful consideration, invoked by the earnest appeal of President Harrison to reconsider its action in directing payment to these nations, as has been done by the Court of Claims as to the Wichita Reservation, the entire $2,000,000 must be paid to the Choctaws and Chickasaws.

But the *rights* of the Comanches, etc., are in no way dependent upon the rights of other tribes.

By the second article of the treaty of October 21, 1867 (15 Stats., 581), the United States agreed that the district of country therein described (as in the agreement) should be set apart for the absolute and undisturbed use and occupation of the Kiowas and Comanches and for such other friendly tribes or individual Indians as, from time to time, they might be willing to admit among them.

By another treaty concluded on the same day (Id., 589) with the Kiowas and Comanches and the Apaches, the latter tribe agreed to be incorporated with the Kiowas and Comanches, who agreed that the Apaches should share in all the benefits of their treaty (first above named).

In the case of the United States *v.* Cook (19 Wall., 591) the Supreme Court held that the right of the Indians to their occupancy is as sacred as that of the United States to the fee, and it was this title that was guaranteed to these Indians by the above treaty. If the United States did not have clear title by which it could convey the right of occupancy to the Indians it must clear the title in order that it may do so. When the Indians are called upon to part with the sacred right of occupancy their compensation is in no manner dependent upon the preexisting rights of other parties.

If the United States owes the Choctaws and Chickasaws any amount for these lands it must pay them, and also the Comanches, etc., for their surrender.

Especially is this so, as it is not claimed or pretended that any amount is due the former so long as the occupancy of the latter continues.

If it should be claimed that Congress has the right to repeal the treaty, the reply is that this right exists only as to cases purely political. It is equally true that Congress has no constitutional power to settle or interfere with rights under treaties except in such cases. (See Holden *v.* Joy, 17 Wall., 247, and authorities therein cited.) This is distinctly recognized in the Chinese exclusion cases. (130 U. S., 609.)

Third. The "agreement" as amended makes no provision for the payment of the principal or interest to the Indians, except that the court shall by its decree direct the payment of said $2,000,000 to the tribes entitled to the same.

The manner of payment is left in uncertainty.

The act contains a provision (section 6) that should any of the lands allotted to the Indians contain valuable mineral deposits, such deposits shall be open to location and entry under the existing mining laws of the United States, but makes no provision for the allotment of other lands in lieu of those so located, nor for other compensation for such lands.

Even if it be constitutional, I do not believe it would be either just or equitable to take away from an allottee the whole or any part of the land which the United States agrees to hold for his exclusive use and benefit, without compensation.

It is, of course, recognized that the United States does not intend to convey mineral deposits to an allottee, and allots no land known to contain such deposits, but by the subsequent discovery of minerals and their opening to location and entry the allottee is deprived of the use of the land for the purposes for which it was allotted.

I can see no justice in placing the sums received from the sale of such allotted mineral lands to the credit of the Indian tribes and leaving the allottee without land or other compensation than such as he would possibly receive as his pro rata share of the tribal funds and which would not be increased by the sale of his entire allotment, the maximum compensation being limited to $2,000,000.

As before remarked, this agreement has been pending for more than six years. In the interest of all concerned it should be finally disposed of during the present session of Congress. If an amendment be inserted in either of the pending bills, submitting the amended agreement for the acceptance or the rejection of the Indians, or if it should be concluded that it would be the duty of the Department, in case either of the bills should pass in their present form, to submit the matter for consent or rejection by the Indians, I should have no objection to its passage, and am of the opinion that the matter would thus receive final disposition.

In case the amended agreement should be rejected by the Indians, as seems most probable, further negotiations could be had with them, and no doubt an agreement obtained which would be fair to them as well as to the United States.

As shown in office report of December 23, 1899, upon the resolution of the Senate calling for certain information in regard to the Kiowa Reservation, the lands of said reservation are not adapted to agricultural purposes and should be allotted to the Indians in larger quantities than is provided for in the present agreement.

Although this office has not hitherto definitely opposed the ratification of the agreement in its present form, the result of the investigation made by Special Agent Pray and Agent Randlett is such as to lead it to conclude that the agreement ought not to be ratified. I am, therefore, of the opinion that the agreement should be rejected by Congress, or that it be ratified with the proposed amendments and submitted to the Indians for their acceptance or rejection.

Two copies of the memorial are herewith transmitted (the signatures being omitted), with the recommendation that they be forwarded to the Senate and House Committees on Indian Affairs with a copy of this report.

Very respectfully, your obedient servant,

W. A. JONES, *Commissioner.*

The SECRETARY OF THE INTERIOR.

KIOWA, COMANCHE, AND APACHE RESERVATION,
Mount Scott, Okla., October 9, 1899.

The COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.:

We, the adult male members of the Kiowa, Comanche, and Apache Indian tribes now residing on our reservation in the Oklahoma Territorry, beg that the honorable the Commissioner of Indian Affairs will approve this, our petition and have it presented to the Committees on Indian Affairs of both houses of Congress.

We pray that the so-called Jerome treaty, made with our people in September, 1892, may not be ratified by Congress because that those of us who signed that treaty were misled by those who represented the Government through the interpreters employed by the commissioners appointed to treat with us. These interpreters led us into the belief that if we did not sign said treaty our lands would be taken from us under the provisions of a law called the Dawes law, then in existence, which would be very much more unfavorable to us than was provided for us in the proposed treaty we were asked to accept, and it was from this assurance, and for no other reason, that we signed said treaty. This was impressed upon us by our agent at that time, who claimed he was our best friend, and if we adopted him into our tribe he was coming to live with us as one of our people, and that his interests and ours were alike, and that to sign the treaty would save us from being forced to accept, under the other law, a less number of acres by allotment than we would be given by the terms of the proposed treaty.

Therefore, each and every one of us who signed that treaty do solemnly declare that if we had not been deceived we would never have signed it. We were not allowed to have any counsel to advise us what was best for us to do, and the white people who were on the reservation at that time were threatened with ejection should they in any way give us advice contrary to that which we received from the commissioners who represented the Government through the interpreters employed by said commissioners. There are white men of good repute now living on our reservation by permission of the Indian Department at Washington who know this to be true, and will make affidavit to the fact that they were threatened with ejectment if they did not advise us to sign the treaty as it was presented to us by the members of the Jerome commission.

We now realize that if this treaty is ratified we are doomed to

destruction as a people, and brought to the same impoverished condition to which the Cheyenne and Arapahoe and other Indian tribes have been brought from the effects of prematurely opening their reservations for the settlement of white men among them. We submit that our lands are not adapted to agricultural purposes, but make excellent grazing pastures for cattle, and that all of it we do not need for our use as homes and grazing our own stock is open for leasing to people engaged in the cattle-raising industry of the country, and that the general public, as well as ourselves, derive more benefit from this condition than would be derived were our lands thrown open for settlement by people who want it for homesteads. From the lands we now have leased we are deriving a revenue that enables us to procure many of the comforts of life. If this revenue is taken from us at this time it will stop the progress we are making in ways of civilization and blight the hopes we have entertained that the Government would continue to protect our interests until we were fitted to compete with the white man in civilized ways for self-support.

We submit that the provision for lands to be allotted to us under this treaty are insufficient because it is evident we can not, on account of the climate of our section, which renders the maturity of crops uncertain, become a successful farming community; that we, or whoever else occupies these lands, will have to depend upon the cattle industry for revenue and support. And we therefore pray, if we can not be granted the privilege of keeping our reservation under the treaty made with us in 1868, and known as the Medicine Lodge treaty, that authority be granted for the consideration of a new treaty that will make the allowance of land to be allotted to us sufficient for us to graze upon it enough stock cattle, the increase from which we can market for support of ourselves and families.

As evidence that this statement is true regarding the inadaptability of the lands of Oklahoma for farming industry, we ask consideration of the fact that to-day there are 6,338,363 acres of land in the Territory, outside of our reservation, awaiting entry from people seeking homesteads.

In conclusion, we beg consideration of the fact that we have kept faith with the Government as pledged in the treaty ratified July 25, 1868, and as a people we are obedient to the laws of the land; that we are not drunkards, nor do we molest the property of the whites who have located on lands adjoining ours. We have placed our children in schools provided by the Government and Christian societies; that these several schools, having a capacity for seven hundred pupils, are kept filled with our children, and that we point to these facts as evidence that we are striving in the right way to fit our people for the day we realize must come, when their children will be dependent upon their own intelligence and physical strength for the support of themselves and their kindred.

We therefore pray that for the reasons we have given herein we may be heard in this, our repudiation of the Jerome treaty, and that Congress will cast it out and not accept it as our free act and deed.

KIOWA AGENCY.

Anadarko, Okla., December 18, 1899.

Interpreter's certificate.

I certify upon honor that I was present at a general council of all the Indians of the Kiowa, Comanche, and Apache tribes of the Kiowa,

etc., Agency, Okla., held at Mount Scott, Apache, Kiowa, and Comanche Indian Reservation, Okla., October 9, 1899, and that the foregoing memorial was adopted and duly signed by all the Indians whose names are attached thereto; that the signatures were attached after the subject of the memorial was duly discussed and understood by all the Indians interested, and that each and every one signed of his own free will, with full knowledge of the purport of his act.

OTTO WELLS,
Official Interpreter.

Agent's certificate.

I, James F. Randlett, lieutenant-colonel, U. S. A., United States Indian agent for the Kiowa, etc., Agency, Okla., certify upon honor that the facts stated in the foregoing "Interpreter's certificate" are true.

JAMES F. RANDLETT,
Lieutenant-Colonel, U. S. A., United States Indian Agent.

O

56TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 419.

AGREEMENT WITH INDIANS OF FORT HALL RESERVATION.

EBRUARY 22, 1900.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Ir. STEPHENS, from the Committee on Indian Affairs, submitted the following

REPORT.

[To accompany S. 255.]

The Committee on Indian Affairs, to whom was referred the bill . 255) to ratify an agreement with the Indians of the Fort Hall dian Reservation in Idaho and making an appropriation to carry the me into effect, have examined the same and report the bill back vorably, with a recommendation that it pass with the following nendments, viz:

Strike out all of section 5 of said bill, beginning on line 24, page 9, d insert in lieu thereof the following, to be known as section 5 of id bill as amended by this committee, viz:

EC. 5. That on the completion of the allotments and the preparation of the sched- provided for in the preceding section, and the classification of the lands as pro- ed for herein, the residue of said ceded lands shall be opened to settlement by the eclamation of the President, and shall be subject to disposal under the homestead, wn-site, stone and timber, and mining laws of the United States only, excepting sixteenth and thirty-sixth sections in each Congressional township, which shall reserved for common-school purposes and be subject to the laws of Idaho: *Pro- d*, That all claimants for lands lying under the canal of the Idaho Canal Company, which are susceptible of irrigation from the water from said canal, shall pay for same at the rate of ten dollars per acre; all agricultural lands not under said al shall be paid for at the rate of two dollars and fifty cents per acre, and grazing ds at the rate of one dollar and twenty-five cents per acre, one-fifth of the respec- sums to be paid at time of original entry, and four-fifths thereof at the time of king final proof; but the rights of honorably discharged Union soldiers and sailors, efined and described in sections twenty-three hundred and four and twenty-three ndred and five of the Revised Statutes of the United States, shall not be abridged, ept as to the sum to be paid as aforesaid.

he classification as to agricultural and grazing lands shall be made by an employee he General Land Office under the direction of the Secretary of the Interior.

o lands in sections sixteen and thirty-six now occupied, as set forth in article e of the agreement herein ratified, shall be reserved for school purposes, but the e of Idaho shall be entitled to indemnity for any lands so occupied: *Provided*, t none of said lands shall be disposed of under the town-site laws for less than ten

dollars per acre: *And provided further*, That all of said lands within five miles of th town of Pocatello shall be sold at public auction, under the direction of the Secretar tary of the Interior, for not less than ten dollars per acre.

The committee further recommends as an amendment the following to be known as section 6 of this bill:

SEC. 6. Whereas David H. Jerome, Alfred M. Wilson, and Warren G. Sayre, du appointed commissioners on the part of the United States, did, on the sixth day October, eighteen hundred and ninety-two, conclude an agreement with th Comanche, Kiowa, and Apache tribes of Indians in Oklahoma, formerly a part the Indian Territory, which said agreement is in the words and figures as follows:

"Articles of agreement made and entered into at Fort Sill, in the Indian Territor on the twenty-first day of October, eighteen hundred and ninety-two, by and betwe David H. Jerome, Alfred M. Wilson, and Warren G. Sayre, commissioners on th part of the United States, and the Comanche, Kiowa, and Apache tribes of India in the Indian Territory.

"ARTICLE I.

"Subject to the allotment of land, in severalty to the individual members of th Comanche, Kiowa, and Apache tribes of Indians in the Indian Territory, as herei after provided for, and subject to the conditions hereinafter imposed, and for the co siderations hereinafter mentioned, the said Comanche, Kiowa, and Apache India hereby cede, convey, transfer, relinquish, and surrender, forever and absolutely, wit out any reservation whatever, express or implied, all their claim, title, and interest any kind and character, in and to the lands embraced in the following-describ tract of country in the Indian Territory, to wit: Commencing at a point where t Washita River crosses the ninety-eighth meridian west from Greenwich; thence the Washita River, in the middle of the main channel thereof, to a point thirty mil by river, west of Fort Cobb, as now established; thence due west to the north fork Red River, provided said line strikes said river east of the one-hundredth meridi of west longitude; if not, then only to said meridian line, and thence due south, said meridian line, to the said north fork of Red River; thence down said north fo in the middle of the main channel thereof, from the point where it may be first int sected by the lines above described, to the main Red River; thence down said R River, in the middle of the main channel thereof, to its intersection with the nine eighth meridian of longitude west from Greenwich; thence north, on said meridi line, to the place of beginning.

"ARTICLE II.

"Out of the lands ceded, conveyed, transferred, relinquished, and surrendered Article I hereof, and in part consideration for the cession thereof, it is agreed by t United States that each member of said Comanche, Kiowa, and Apache tribes Indians over the age of eighteen (18) years shall have the right to select for hims or herself one hundred and sixty (160) acres of land to be held and owned in s eralty, to conform to the legal surveys in boundary; and that the father, or, if be dead, the mother, if members of either of said tribe of Indians, shall have t right to select a like amount of land for each of his or her children under the age eighteen (18) years; and that the Commissioner of Indian Affairs, or someone him appointed for the purpose, shall select a like amount of land for each orph child belonging to either of said tribes under the age of eighteen (18) years.

"ARTICLE III.

"It is further agreed that the land in said reservation shall be classed as gra growing and grazing land; and in making selection of lands to be allotted in sev alty as aforesaid each and every Indian herein provided for shall be required to t at least one-half in area of his or her allotments of grazing land. It is hereby furt expressly agreed that no person shall have the right to make his or her selection land in any part of said reservation that is now used or occupied for military, agen school, school-farm, religious, or other public uses or in sections sixteen (16) thirty-six (36) in each Congressional township, except in cases where any Comanc Kiowa, or Apache Indian has heretofore made improvements upon and now uses occupies a part of said sections sixteen (16) and thirty-six (36), such Indian m make his or her selection within the boundaries so prescribed so as to include his her improvements. It is further agreed that wherever in said reservation any Indi entitled to take lands in severalty hereunder, has made improvements, and now t and occupies the land embracing such improvements, such Indian shall have

undisputed right to make his or her selection within the area above provided for allotments, so as to include his or her said improvements.

"It is further agreed that said sections sixteen (16) and thirty-six (36) in each Congressional township in said reservation shall not become subject to homestead entry but shall be held by the United States and finally sold for public school purposes. It is hereby further agreed that wherever in said reservation any religious society or other organization is now occupying any portion of said reservation for religious or educational work among the Indians, the land so occupied may be allotted and confirmed to such society or organization, not, however, to exceed one hundred and sixty (160) acres of land to any one society or organization so long as the same shall be so occupied and used; and such land shall not be subject to homestead entry.

"ARTICLE IV.

"All allotments hereunder shall be selected within twelve months from the ratification of this agreement by the Congress of the United States: *Provided*, The Secretary of the Interior, in his discretion, may extend the time for making such selection; and should any Indian entitled to allotments hereunder fail or refuse to make his or her selection of land in that time, then the allotting agent in charge of the work of making such allotments shall within the next thirty (30) days after said time make allotments to such Indians, which shall have the same force and effect as if the selection were made by the Indian.

"ARTICLE V.

"When said allotments of land shall have been selected and taken as aforesaid and approved by the Secretary of the Interior, the titles thereto shall be held in trust for the allottees, respectively, for the period of twenty-five (25) years, in the time and manner and to the extent provided for in the act of Congress entitled "An act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and Territories over the Indians, and for other purposes," approved February 8, 1887, and an act amendatory thereof, approved February 28, 1891.

"And at the expiration of the said period of twenty-five (25) years the title thereto shall be conveyed in fee simple to the allottees or their heirs, free from all incumbrances.

"ARTICLE VI.

"As a further and only additional consideration for the cession of territory and relinquishment of title, claim, and interest in and to lands as aforesaid, the United States agrees to pay to the Comanche, Kiowa, and Apache tribes of Indians, in the Indian Territory, the sum of two million (2,000,000) dollars.

"To be paid as follows: As fast as the lands opened for settlement under this Act are sold, the money received from such sales shall be covered into the Treasury and placed to the credit of the said Comanche, Kiowa, and Apache tribes of Indians; *Provided*, That no part of said money shall be paid to said Indians until the question of title to the said lands is fully settled between said tribes and the Choctaw and Chickasaw tribes by a suit in the Court of Claims, as hereinafter provided; and said court shall by its decree direct the payment of said two millions of dollars to the tribes entitled to the same.

"Nothing herein contained shall be held to affect in any way any annuities due said Indians under existing laws, agreements, or treaties.

"ARTICLE VIII.

"It is further agreed that wherever in said reservation any member of any of the tribes of said Indians has, in pursuance of any laws or under any rules or regulations of the Interior Department taken an allotment, such allotment, at the option of the allottee, shall be confirmed and governed by all the conditions attached to allotments taken under this agreement.

"ARTICLE IX.

"It is further agreed that any and all leases made in pursuance of the laws of the United States of any part of said reservation which may be in force at the time of the ratification by Congress of this agreement shall remain in force the same as if this agreement had not been made.

"ARTICLE X.

"It is further agreed that the following-named persons, not members by blood of either of said tribes, but who have married into one of the tribes, to wit, Mabel R. Given, Thomas F. Woodward, William Wyatt, Kiowa Dutch, John Nestill, James N. Jones, Christian Ke oh tah, Edward L. Clark, George Conover, William Deitrick, Ben Roach, Lewis Bentz, Abilene, James Gardloupe, John Sanchez, the wife of Boone Chandler, whose given name is unknown, Emmit Cox, and Horace P. Jones, shall each be entitled to all the benefits of land and money conferred by this agreement, the same as if members by blood of one of said tribes.

"ARTICLE XI.

"This agreement shall be effective only when ratified by the Congress of the United States."

Said agreement be, and the same hereby is, accepted, ratified, and confirmed as herein amended.

That the Secretary of the Interior is hereby authorized and directed to cause the allotments of said lands, provided for in said treaty among said Indians, to be made by any Indian inspector or special agent.

That all allotments of said land shall be made under the direction of the Secretary of the Interior to said Indians within one year from the passage of this act, subject to the exceptions contained in article four of said treaty.

That the lands acquired by this agreement shall be opened to settlement by proclamation of the President within six months after allotments are made, and be disposed of under the general provisions of the homestead and town-site laws of the United States: *Provided*, That in addition to the land-office fees prescribed by statute for such entries the entryman shall pay one dollar and twenty-five cents per acre for the land entered at the time of submitting his final proof: *And provided further*, That in all homestead entries where the entryman has resided upon and improved the land entered in good faith for the period of fourteen months he may commute his entry to cash upon the payment of one dollar and twenty-five cents per acre: *And provided further*, That the rights of honorably discharged Union soldiers and sailors of the late civil war, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes shall not be abridged: *And provided further*, That any person who, having attempted to but for any cause failed to secure a title in fee to a homestead under existing laws, or who made entry under what is known as the commuted provision of the homestead law, shall be qualified to make a homestead entry upon said lands: *And provided further*, That any qualified entryman having lands adjoining the lands herein ceded, whose original entry embraced less than one hundred and sixty acres in all, shall have the right to enter so much of the lands by this agreement ceded lying contiguous to his said entry as shall, with the land already entered, make in the aggregate one hundred and sixty acres, said land to be taken upon the same conditions as are required of other entrymen: *And provided further*, That the settlers who located on that part of said lands called and known as the "neutral strip" shall have preference right for thirty days on the lands upon which they have located and improved.

That sections sixteen and thirty-six, thirteen and thirty-three, of the lands hereby acquired in each township shall not be subject to entry, but shall be reserved, sections sixteen and thirty-six for the use of the common schools, and sections thirteen and thirty-three for university, agricultural colleges, normal schools, and public buildings of the Territory and future State of Oklahoma; and in case either of said sections, or parts thereof, is lost to said Territory by reason of allotment under this act or otherwise, the governor thereof is hereby authorized to locate other lands not occupied in quantity equal to the loss.

That the payment for said lands shall be made to the Indian tribes entitled to receive the same under the provisions of this act as fast as the lands opened for settlement under this act are sold. The money received from such sale shall be covered into the Treasury and placed to the credit of the said Comanche, Kiowa, and Apache tribes of Indians: *Provided*, That no part of said money shall be paid to said Indians until the question of title to said lands is fully settled between said tribes and the Choctaw and Chickasaw tribes by a suit in the Court of Claims as hereinafter provided for. And said court shall direct the payment thereof to the tribes that they may find entitled thereto.

That none of the money or interest thereon which is, by the terms of the said agreement, to be paid to said Indians shall be applied to the payment of any

judgment that has been or may hereafter be rendered under the provisions of the act of Congress approved March third, eighteen hundred and ninety-one, entitled "An act to provide for the adjudication and payment of claims arising from Indian depredations."

That should any of said lands allotted to said Indians, or opened to settlement under this act, contain valuable mineral deposits, such mineral deposits shall be open to location and entry, under the existing mining laws of the United States, upon the passage of this act, and the mineral laws of the United States are hereby extended over said lands.

That as the Choctaw and Chickasaw nations claim to have some right, title, and interest in and to the lands ceded by the foregoing treaty as soon as the same are abandoned by said Comanche, Kiowa, and Apache tribes of Indians, jurisdiction be, and is hereby, conferred upon the United States Court of Claims to hear and determine the said claim of the Chickasaws and the Choctaws, and to render a judgment thereon, it being the intention of this act to allow said Court of Claims jurisdiction, so that the rights, legal and equitable, of the United States and the Choctaw and Chickasaw nations, and the Comanche, Kiowa, and Apache tribes of Indians in the premises shall be fully considered and determined, and to try and determine all questions that may arise on behalf of either party in the hearing of said claim; and the Attorney-General is hereby directed to appear in behalf of the Government of the United States; and either of the parties to said action shall have the right of appeal to the Supreme Court of the United States: *Provided*, That such appeal shall be taken within sixty days after the rendition of the judgment objected to, and that the said courts shall give such causes precedence: *And provided further*, That nothing in this act shall be accepted or construed as a confession that the United States admit that the Choctaw and Chickasaw nations have any claim to or interest in said lands or any part thereof.

That said action shall be presented by a single petition making the United States party defendant, and shall set forth all the facts on which the said Choctaw and Chickasaw nations claim title to said land; and said petition may be verified by the authorized delegates, agents, or attorneys of said Indians upon their information and belief as to the existence of such facts, and no other statement or verification shall be necessary: *Provided*, That if said Choctaw and Chickasaw nations do not bring their action within ninety days from the approval of this act, or should they dismiss said suit, and the same shall not be reinstated, their claim shall be forever barred.

The committee have added section 6 to said Senate bill which ratifies and confirms an agreement with the Comanche, Kiowa, and Apache tribes of Indians in Oklahoma Territory and opens their reservations for settlement.

The importance of this amendment has caused your committee to carefully examine the subject, and we have embodied House bill 8590 as an amendment.

A bill for the same purpose passed this House in the Fifty-fifth Congress, after having received a unanimous report from this committee, and after the fullest hearings from delegations of the Indian tribes and all parties at interest.

Your committee find that the land described in the agreement is located in what is known as the "leased district," and that the Choctaw and Chickasaw nations of Indians claim an interest in so much of it as the Comanche, Kiowa, and Apache tribes of Indians do not take by allotment, on the ground that by the treaty of 1866 they only ceded the land in trust, while it is claimed by the United States that by said treaty the said Choctaw and Chickasaw nations, for a valuable consideration, ceded all their rights, title, and interest in and to said lands to the United States.

Your committee believe that certain changes should be made in the agreement, so as to extend the time of the opening, change the date and manner of payments, extend the mining laws of the United States over the reservation, and provide for the settlement in court of the claim of the Choctaw and Chickasaw nations.

The following changes are made in the agreement:

Article 4 is amended so as to give twelve months for the selection of allotments in lieu of requiring them to be made in ninety days. The manner of paying for the land is changed so that as fast as the lands are sold the money received from such sales is to be covered into the Treasury and placed to the credit of said Indians, but no part of it is to be paid out until the question of title is fully settled.

The bill makes the following provisions for the settlement of the claim of the Choctaw and Chickasaw nations:

That as the Choctaw and Chickasaw nations claim to have some right, title, and interest in and to the lands ceded by the foregoing treaty, as soon as the same are abandoned by said Comanche, Kiowa, and Apache tribes of Indians, jurisdiction be, and is hereby, conferred upon the United States Court of Claims to hear and determine the said claim of the Chickasaws and the Choctaws and to render judgment thereon, it being the intention of this act to allow said Court of Claims jurisdiction, so that the rights, legal and equitable, of the United States and the Choctaw and Chickasaw nations, and the Comanche, Kiowa, and Apache tribes of Indians in the premises shall be fully considered and determined, and to try and determine all questions that may arise on behalf of either party in the hearing of said claims; and the Attorney-General is hereby directed to appear in behalf of the Government of the United States, and either of the parties to said action shall have the right of appeal to the Supreme Court of the United States: *Provided*, That such appeal shall be taken within sixty days after the rendition of the judgment objected to, and that the said courts shall give such causes precedence: *And provided further*, That nothing in this act shall be accepted or construed as a confession that the United States admit that the Choctaw and Chickasaw nations have any claim to or interest in said lands or any part thereof.

That said action shall be presented by a single petition making the United States party defendant, and shall set forth all the facts on which the said Choctaw and Chickasaw nations claim title to said land; and said petition may be verified by the authorized delegates, agents, or attorneys of said Indians upon their information and belief as to the existence of such facts, and no other statement or verification shall be necessary: *Provided*, That if said Choctaw and Chickasaw nations do not bring their action within ninety days from the approval of this act, or, should they dismiss said suit, the same shall be reinstated, and their claims shall be forever barred.

These two sections are necessary, in the judgment of your committee, for the reason that the land is located in what is termed the "leased district," and the Choctaw and the Chickasaw nations claim that by the treaty of 1866 they only ceded the land in trust, and that as soon as the Comanche, Kiowa, and Apache tribes of Indians abandon the land, so much of it as they do not take by allotment reverts to said Choctaw and Chickasaw nations; while it is claimed on the part of the United States that by said treaty of 1866 the Choctaws and Chickasaws, for a valuable consideration, ceded all their rights, title, and interest in and to said lands to the United States.

This agreement was made or entered into on the 6th day of October, 1892, and was favorably reported in the Fifty-fourth Congress. It embraces 2,968,893 acres of land; and after allotting or giving to each Indian 160 acres, it cedes to the United States 2,517,853 acres, which will be opened for settlement.

There are only 2,679 of these Indians. They occupy over 600 dwelling houses, which may be retained by them when they take their allotments. It is claimed that within one year each head of a family on the reservation will be occupying his own dwelling.

This reservation contains very valuable farm and grazing lands. For years the most of it has been used by cattlemen for the grazing of large herds of cattle.

Your committee are advised that these Indians have made great

advancement during the last few years under the management of acting agent Captain Baldwin and those who have succeeded him. Many of them are now occupying their own houses, and are fast becoming self-supporting.

The governor of Oklahoma Territory says:

I can not refrain from urging, as I have heretofore, that these reservations be at once opened to settlement. They embrace some of the finest lands in Oklahoma Territory, and would be capable of supporting a large population.

The following article shows the condition and character of the land in this reservation:

The Comanche News says: "Taking the census of the different tribes within this reservation, as enumerated by Government officials, there are 2,679 Indians who will be entitled to 160 acres of land each. Subtracting this and the military reservation from the total acreage in the reservation, we have a little more than 2,500,000 acres for disposal by the Government. Within this are the Wichita Mountains, containing, the Secretary says, about 400,000 acres, and the Kechi Hills, containing 25,000 acres. This taken from the 2,500,000 acres still leaves over 2,000,000 acres, at least 90 per cent of which is fine agricultural land, as will be attested by the thousands of honest men in this country who are thoroughly acquainted with every section of land within the reservation.

"As to the area of the Wichita Mountains, it is admitted that most of it is fit for neither grazing nor agriculture, but it is not entirely a desert waste. A very conservative estimate would place the useful lands for grazing and agricultural purposes at an amount sufficient for 500 homes of 160 acres each. Besides this, it is generally conceded that these mountains abound in valuable minerals.

"With reference to the character of the agricultural lands, it is only necessary to ask the hundreds of farmers along the border to learn that they have no doubt concerning the good quality of the land for grain, cotton, etc. It would be a strange coincidence indeed if the land in the reservation should prove to be worthless for agriculture while the adjoining lands in the Chickasaw country should yield so bountifully to the touch of the intelligent farmer.

"We are informed by reliable farmers, who have been farming in the Chickasaw country within 200 yards of the Comanche and Kiowa Reservation, that they have known but three partial failures in twelve years—never a total failure of all crops. This true, why should less good results be expected from the adjoining lands within the reservation?

"As an index to what is being done in this section in the way of farm products the following statement, by the agent of the Rock Island Railroad at this point, will not be amiss:

"'For the fiscal year just passed we have shipped from this station 2,850 bales of cotton, about 100 cars of grain, and a number of cars of stock.'

"What has been done here on the east of the ninety-eighth meridian can be done on the west side.

"I have had a general knowledge of the reservation known as the Comanche country for over twenty years, and know that a large majority of the land is fine agricultural land, as good and even better in the main than this part of the Chickasaw country. The water is more plentiful and better than in the Chickasaw country. There is comparatively very little waste land in the reservation.

"My occupation is farming.

"J. M. MONTGOMERY.

"Subscribed and sworn to before me this 24th day of January, 1900.

"J. B. WILKINSON, *Notary Public.*

"I have had a knowledge of the country known as the Comanche country for six years, and know it to be as good and, in some respects, superior to the Chickasaw country. It would be a fine farming country. The great majority of the land is tillable and of a very productive nature. There is room in that country for several thousand good homes after the Indians have been allotted their lands.

"My occupation is dry-goods clerk.

"G. H. KINCAID.

"Subscribed and sworn to before me this 24th day of January, 1900.

"J. B. WILKINSON, *Notary Public.*

"I have resided along the border of the Kiowa and Comanche country for fifteen years and have a general knowledge of the country. A very large per cent of the land is high-grade agricultural land, and, in the main, is better watered than the Chickasaw country or north Texas. The seasons are comparatively sure. Within the Wichita Mountains are some fine valleys of land. A large number of Indians are located in these mountains and will take their allotments there.

"My occupation is stock raising.

"TOM FARRIS.

"Subscribed and sworn to before me this 24th day of January, 1900.

"J. B. WILKINSON, *Notary Public.*"

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57TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { DOCUMENT No. 552.

MEMORIAL FROM THE CHEROKEE INDIANS.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

A MEMORIAL FROM THE CHEROKEE INDIANS, TOGETHER WITH THE DRAFT OF A BILL FOR THE ALLOTMENT OF LANDS.

APRIL 16, 1902.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, April 15, 1902.

SIR: I have the honor to transmit herewith a memorial of the national council of the Cherokee Nation, approved by its principal chief on December 17, 1901, requesting—

the individualization of the lands and disbursements of moneys of the Cherokee tribe of Indians, according to the twentieth article of the treaty of July nineteenth, eighteen hundred and sixty-six, in lieu of the manner and method of allotment, as is provided for in the act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled "An act for the protection of the people of the Indian Territory, and for other purposes," commonly known as the Curtis Act.

Upon a careful examination of the provisions contained in said memorial, it is considered that many of them are inexpedient and impracticable, and I have therefore caused to be prepared a draft of legislation, being "a bill to allot the lands of the Cherokee tribe of Indians in Indian Territory, and for other purposes," which in my judgment is preferable to the memorial above referred to.

The provisions of this bill relating to the allotment of lands and the disposition of mineral in said nation are quite similar to those contained in the recent agreement with the representatives of the Choctaw and Chickasaw nations which was submitted by the Department on March 26 last.

The bill also contains other provisions similar to those found in the agreement, which, with certain amendments, was ratified by the act of Congress approved March 1, 1901 (31 Stat., 848), and was afterwards rejected at an election held on April 29, 1901, the majority against the agreement being 1,023 out of a total of 5,569 votes cast at the election.

In view of the action of the nation in rejecting said agreement, no provision has been placed in said bill for its submission to the legal voters of the nation for rejection or ratification.

It is confidently believed that if legislation be enacted upon the lines indicated in said bill it will greatly facilitate the work of the Department in winding up the affairs of the Cherokee Nation.

The memorial, marked "Exhibit A," and the bill, marked "Exhibit B," are accordingly submitted for such action as may be deemed appropriate in the premises.

Respectfully,

E. A. HITCHCOCK,
Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

EXHIBIT A.

Memorial of the national council of the Cherokee Nation requesting the individualization of the lands and disbursements of moneys of the Cherokee tribe of Indians according to the twentieth article of the treaty of July nineteenth, eighteen hundred and sixty-six, in lieu of the manner and method of allotment as is provided for in the act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled "An act for the protection of the people of the Indian Territory, and for other purposes," commonly known as the Curtis Act, and through a delegation to be provided for and appointed.

SEC. 1. That, conditioned as hereafter set forth, exercising the right of the national council as set forth in the twentieth article of the treaty of eighteen hundred and sixty-six between the Government of the United States and the Cherokee Nation, the request be, and the same is hereby, made that the country reserved for the Cherokees (the lands belonging to the Cherokee tribe of Indians in the Indian Territory) shall be allotted among them at the expense of the United States according to the survey of same already completed by the United States: *Provided, however,* That this request for allotment is made only with the understanding that such allotment shall be made under conditions in the manner as follows, to wit:

That all lands belonging to the Cherokee tribe of Indians, in Indian Territory, except as are herein expressly reserved, shall be appraised at their true values, considering the nature and fertility of the soil, location and value of same, excluding improvements placed by allottee on lands selected by him.

SEC. 2. All appraisements shall be made under the direction of the Secretary of the Interior and shall be completed and finally approved before September first, nineteen hundred and two, or as soon thereafter as practicable, under no circumstances later than November first, nineteen hundred and two. When said appraisements shall have been finally completed and approved by the Secretary of the Interior, a full detailed report of same shall be furnished the principal chief for the information of the Cherokee Nation and people.

SEC. 3. The total value of the divisible lands shall be determined and the per capita share of each beneficiary ascertained before beginning allotment of lands.

SEC. 4. The measure for the equalization of allotments shall be the average or per capita share of the total valuation of the lands.

SEC. 5. All lands of the Cherokee Nation, as herein provided, shall be allotted, under the direction of the Secretary of the Interior, to the members of the tribe entitled to share therein so as to give to each so entitled an equal share in the whole, in value, as nearly as may be, and to conform to the survey lines as nearly as may be.

All funds of the tribe, and all moneys accruing to the tribe under the provisions of this plan of allotment, shall be paid, under the direction of the Secretary of the Interior, direct to each individual entitled to share therein as soon after allotment of lands as practicable.

SEC. 6. All controversies arising between members as to their right to select particular tracts of land shall be determined by the Secretary of the Interior.

SEC. 7. Any member having in his possession lands, in actual cultivation, in excess of his per capita share for himself, for his wife, if entitled in her own right and for each of his minor children, shall on or before the first day upon which allotments shall begin select therefrom allotments for himself and for the members of his family aforesaid, which said allotments he may hold and no more; and if he have lawful

improvements upon the excess, he may dispose of same, if he so desires, to any citizen, who may thereupon select lands so as to include his improvements, but after the expiration of said time any citizen may take any lands not already selected by another.

SEC. 8. Each citizen may receive his full pro rata share of lands in a single allotment, and if for any reason separate tracts of land shall be allotted to a citizen he shall receive them all at the same time, and all shall be included in one deed.

SEC. 9. When any citizen shall select his allotment as herein provided, he shall receive certificate therefor, and the Secretary of the Interior shall thereupon put him in immediate and unrestricted possession of the same.

SEC. 10. Each allotment of land shall be nontaxable for twenty-one years, or until title passes from the allottee, such condition to be stipulated in the deed, and shall be free from incumbrance by any debt or obligation contracted prior to the date of the deed.

SEC. 11. Allotments to minors may be selected by the guardian, or by the father or mother, in the order named, and shall not be sold during their minority. Allotments may be selected for prisoners and convicts and aged and infirm persons by their duly appointed agents and for incompetents by their guardians, curators, or other suitable persons akin to them, but it shall be the duty of the Secretary of the Interior to see that such selections are made for the best interests of such persons.

SEC. 12. The Delaware Indians who are citizens of the Cherokee Nation shall take lands and share in the funds of the tribe as their rights may be determined by the Court of Claims or by the Supreme Court, if appealed, in the suit instituted therein by the Delaware Indians against the Cherokee Nation and now pending, when the said suit shall be finally decided, and no allotment of lands herein provided for shall be made until said suit has been finally determined. When final judgment has been rendered in said suit lands shall be allotted to said Delaware Indians in conformity with the terms of the judgment and their individual rights thereunder. The said suit shall be advanced on the dockets of the Court of Claims, and of the Supreme Court if appeal is taken, and shall be determined at the earliest time practicable.

TOWNS.

SEC. 13. To the town of Fort Gibson shall be added three hundred and twenty (320) acres heretofore included in the old military reservation, including the buildings on the same. The said three hundred and twenty acres shall be surveyed and platted and laid out into town lots, with necessary streets and alleys, the same as other towns, and the survey, appraisement, and sale of lots shall be made under rules and regulations to be prescribed by the Secretary of the Interior. All towns as laid off and surveyed and platted into town lots, streets, and alleys by authority of the Cherokee Nation shall remain as platted at the present time: Provided, however, there may be added to any town by extending the original survey, making said additional survey conform to the original survey as to streets, alleys, etc., such additional territory as may be required for its present needs and reasonable prospective growth.

SEC. 14. All towns in the Cherokee Nation having a present population of two hundred or more shall be surveyed, laid out, and appraised under the provisions of an act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and one, and for other purposes," approved May thirty-first, nineteen hundred, which said provisions are as follows: "That the Secretary of the Interior is hereby authorized, under rules and regulations to be prescribed by him, to survey, lay out, and plat into town lots, streets, alleys, and parks, the sites of such towns and villages in the Choctaw, Chickasaw, Creek, and Cherokee nations as may at that time have a population of two hundred or more, in such manner as will best subserve the then present needs and reasonable prospective growth of such towns. The work of surveying, laying out, and platting such town sites shall be done by competent surveyors, who shall prepare five copies of the plat of each town site, which, when the survey is approved by the Secretary of the Interior, shall be filed as follows: One in the office of Commissioner of Indian Affairs, one with the principal chief of the nation, one with the clerk of the court within the territorial jurisdiction of which the town is located, one with the Commission to the Five Civilized Tribes, and one with the town authorities, if there be such. Where in his judgment the best interests of the public service require, the Secretary of the Interior may secure the surveying, laying out, and platting of town sites in any of said nations by contract.

"Hereafter the work of the respective town-site commissions provided for in the

agreement with the Choctaw and Chickasaw tribes, ratified in section twenty-nine of the act of June twenty-eighth, eighteen hundred and ninety-eight, entitled 'An act for the protection of the people of the Indian Territory, and for other purposes,' shall begin as to any town site immediately upon the approval of the survey by the Secretary of the Interior, and not before.

"The Secretary of the Interior may, in his discretion, appoint a town-site commission, consisting of three members for each of the Creek and Cherokee nations, at least one of whom shall be a citizen of the tribe and shall be appointed upon the nomination of the principal chief of the tribe. Each commission, under the supervision of the Secretary of the Interior, shall appraise and sell for the benefit of the tribe the town lots in the nation for which it is appointed, acting in conformity with the provisions of any then existing act of Congress or agreement with the tribe approved by Congress. The agreement of any two members of the commission as to the true value of any lot shall constitute a determination thereof, subject to the approval of the Secretary of the Interior; and if no two members are able to agree, the matter shall be determined by such Secretary.

"Where in his judgment the public interests will be thereby subserved, the Secretary of the Interior may appoint in the Choctaw, Chickasaw, Creek, or Cherokee Nation a separate town-site commission for any town, in which event as to that town such local commission may exercise the same authority and perform the same duties which would otherwise devolve upon the commission for that nation. Every such local commission shall be appointed in the manner provided in the act approved June twenty-eighth, eighteen hundred and ninety-eight, entitled 'An act for the protection of the people of the Indian Territory, and for other purposes.'

"The Secretary of the Interior, where in his judgment the public interests will be thereby subserved, may permit the authorities of any town in any of said nations, at the expense of the town, to survey, lay out, and plat the site thereof, subject to his supervision and approval, as in other instances."

"As soon as the plat of any town site is approved, the proper commission shall, with all reasonable dispatch, and within a limited time, to be prescribed by the Secretary of the Interior, proceed to make the appraisement of the lots and improvements, if any, thereon, and after the approval thereof by the Secretary of the Interior shall, under the supervision of the Secretary, proceed to the disposition and sale of the lots in conformity with any then existing act of Congress or agreement with the tribe approved by Congress, and if the proper commission shall not complete such appraisement and sale within the time limited by the Secretary of the Interior they shall receive no pay for such additional time as may be taken by them, unless the Secretary of the Interior for good cause shown shall expressly direct otherwise.

"The Secretary of the Interior may, for good cause, remove any member of any town-site commission, tribal or local, in any of said nations, and may fill the vacancy thereby made or any vacancy otherwise occurring in like manner as the place was originally filled.

"It shall not be required that the town-site limits established in the course of the platting and disposing of town lots and the corporate limits of the town, if incorporated, shall be identical or coextensive; but such town-site limits shall be so established as to best subserve the then present needs and reasonable prospective growth of the town, as the same shall appear at the times when such limits are respectively established: *Provided further*, That the exterior limits of all town sites shall be designated and fixed at the earliest practicable time under rules and regulations prescribed by the Secretary of the Interior.

"Upon the recommendation of the Commission to the Five Civilized Tribes, the Secretary of the Interior is hereby authorized at any time before allotment to set aside and reserve from allotment any lands in the Choctaw, Chickasaw, Creek, and Cherokee nations, not exceeding one hundred and sixty acres in any one tract, at such stations as are or shall be established in conformity with law on the line of any railroad which shall be constructed or be in process of construction in or through either of said nations prior to the allotment of lands therein, and this irrespective of the population of such town site at the time. Such town sites shall be surveyed, laid out and platted, and the lands therein disposed of for the benefit of the tribe in the manner herein prescribed for other town sites: *Provided further*, That whenever any tract of land shall be set aside as herein provided, which is occupied by a member of the tribe, such occupant shall be fully compensated for his improvements thereon under such rules and regulations as may be prescribed by the Secretary of the Interior: *Provided*, That hereafter the Secretary of the Interior may, whenever the chief executive or principal chief of said nation fails or refuses to appoint a town-site commissioner for any town or to fill any vacancy caused by the neglect or refusal of the

town-site commissioner appointed by the chief executive or principal chief of said nation to qualify or act, in his discretion, appoint a commissioner to fill the vacancy thus created."

SEC. 15. Any citizen in rightful possession of any town lot which has been improved as required by tribal laws, the right of occupancy of which has been acquired under tribal laws, shall have the right to purchase such lot by paying one-half of the appraised value thereof.

SEC. 16. Any citizen in rightful possession of any town lot having improvements thereon other than temporary buildings, fencing, and tillage, the occupancy of which has not been acquired under tribal laws, shall have the right to purchase same by paying one-half the appraised value thereof: *Provided*, That any other person in peaceful possession of any town lot having improvements thereon other than temporary buildings, fencing, and tillage, the occupancy of which has not been acquired under tribal laws, shall have the right to purchase such lot by paying the appraised value thereof.

SEC. 17. Any citizen in rightful possession of any town lot not having improvements thereon, the occupancy of which has been acquired under tribal laws, shall have the right to purchase such lot by paying two-thirds the appraised value thereof.

SEC. 18. When the appraisement of any town lot so improved is made and approved the commission shall notify the claimant thereof of the amount of appraisement, and he shall, within sixty days thereafter, make payment of ten per centum of the amount due for the lot, and four months thereafter he shall pay fifteen per centum additional, and the remainder of the purchase money he shall pay in three equal annual installments without interest; but if the owner of any such lot fail to purchase same and make the first and second payments aforesaid within the time aforesaid the lot and improvements shall be sold at public auction to the highest bidder, under the direction of the townsite commission, at a price not less than their appraised value, and the purchaser shall pay the purchase price to the owner of the improvements, less the appraised value of the lot.

SEC. 19. All lots not having thereon improvements other than temporary buildings, fencing, and tillage, the sale or disposition of which is not herein otherwise specifically provided for, shall be sold within twelve months after appraisement, under direction of the Secretary of the Interior, after due advertisement, at public auction to the highest bidder, at not less than their appraised value.

SEC. 20. Any citizen occupying more than four acres of unplatted lands which may be laid out in town lots in any town, and which are to be sold at public auction as above, shall have the right to select in a body and retain a sufficient number of such lots at their appraised value as may be equal to a standard allotment, to be taken in lieu of his allotment, and in addition thereto he may purchase one-fourth of the remaining lots, to be selected in a body, into which such land has been divided, by paying two-thirds of their appraised value.

SEC. 21. If any citizen have lands in any town, occupied and used by him as a home, he may purchase the lots into which such lands may be platted by paying one-half their appraised value, not, however, exceeding four acres; but this right shall not extend to persons who take their allotments out of unplatted lands as herein provided.

SEC. 22. The purchaser of any unimproved town lot sold at public auction shall pay twenty-five per centum of the purchase money at the time of the sale, and within four months thereafter he shall pay twenty-five per centum additional, and the remainder of the purchase money he shall pay in two equal annual installments, without interest.

SEC. 23. If the purchaser of any town lot fail to make payment of any sum when due, the same shall thereafter bear six per centum interest per annum until paid.

SEC. 24. The purchaser of any town lot, may at any time, pay the full amount of the purchase money, and he shall thereupon receive title therefor.

SEC. 25. All lots ar parts of lots, not exceeding fifty by one hundred and fifty feet in size, upon which church houses and parsonages have been erected, and which are occupied as such at the time of appraisement, shall be conveyed gratuitously to the churches to which such improvements belong, and if such churches have inclosed other adjoining lots actually necessary for their use, they may purchase the same by paying one-half the appraised value thereof.

SEC. 26. All town lots purchased by citizens under the provisions of this plan of allotment shall be free from incumbrance by any debt contracted prior to the date of the deed therefor, except for improvements thereon, or for money borrowed to pay the purchase price to the nation.

SEC. 27. Any citizen having the right of occupancy of an unimproved residence lot in any town at the date of this agreement, and owning no other lot or land therein,

shall have the right to purchase such lot by paying one-half of the appraised value thereof.

SEC. 28. Any person whomsoever may bid for and purchase any lot sold at public auction as herein provided.

SEC. 29. No taxes shall be assessed by any town government against any town lot remaining unsold, but taxes may be assessed against any town lot sold as herein provided, and the same shall constitute a lien upon the interest of the purchaser therein after any payment has been made thereon by him, and if forfeiture of any lot be made, all taxes assessed against such lot shall be paid out of any money paid thereon by the purchaser.

SEC. 30. The town authorities may select and locate, subject to the approval of the Secretary of the Interior, a cemetery within suitable distance from each town, to embrace such number of acres as may be deemed necessary for such purpose, and the town-site commission shall appraise the same at its true value, and the town may purchase the same by paying such value; and if any citizen have improvements thereon, other than fencing and tillage, they shall be appraised by said commission and paid for by the town. The town authorities shall dispose of the lots in such cemetery at reasonable prices, in suitable sizes for burial purposes, and the proceeds thereof shall be applied to the general improvement of the property: *Provided*, That lands already laid out for cemeteries by the tribal authorities shall be included in the cemeteries herein provided for, without cost to the towns, and the holdings of burial lots therein now occupied for such purposes shall in no wise be disturbed.

SEC. 31. All towns now in existence, where there are two or more places of business and less than two hundred and more than fifty inhabitants may be surveyed and laid out into town lots and necessary streets and alleys and platted as other towns, each to embrace such amount of land as may be deemed necessary, not exceeding forty acres, which survey shall be made in manner provided for other towns, and the appraisement of the town lots of said towns may be made by any commission appointed for either of the other towns having two hundred or more inhabitants; and all lots in said towns having thereon improvements other than temporary buildings, fencing, and tillage may be purchased by any citizen having rightful possession thereof and owning the improvements thereon by paying one-half the appraised value. The survey, appraisement, and sale of lots shall be made under regulations to be prescribed by the Secretary of the Interior.

SEC. 32. The United States may purchase in any town in the Cherokee Nation suitable lands for court-houses, jails, and other necessary public buildings for its use by paying the appraised value thereof, the same to be selected under the direction of the department for whose use such buildings are to be erected, and if any person have improvements thereon other than temporary buildings, fencing, and tillage the same shall be appraised and paid for by the United States.

ROLLS OF MEMBERSHIP.

SEC. 33. The rolls of membership, upon which final allotment of all the common property of the Cherokee Nation shall be made, shall be as of the date of final ratification of this plan of allotment, and the names of all persons then living and entitled to receive allotments shall be placed on said rolls.

SEC. 34. No child born to any member after said date shall be entitled to a per capita share of said common property.

SEC. 35. Such rolls shall, in all other respects, be made in strict compliance with the provisions of section twenty-one of the act of Congress of June twenty-eighth, eighteen hundred and ninety-eight, entitled, "An act for the protection of the people of the Indian Territory, and for other purposes," and no original application for enrollment shall be made or received after September first nineteen hundred and two.

SEC. 36. If any member who was living and entitled to an allotment on the date of the final ratification hereof, die before receiving his per capita share of the lands and funds of the tribe, his right of allotment and share of the funds shall descend to his heirs according to the laws of descent and distribution of the Cherokee Nation, and shall be allotted and distributed to them accordingly.

SEC. 37. No person who has been enrolled by the proper authority as a citizen of any other tribe shall be enrolled as a member of the Cherokee tribe.

SEC. 38. All members of the Cherokee Nation living and entitled to per capita shares of the lands and funds of the tribe on the day this plan of allotment receives final ratification, and no other person whomsoever, shall take allotments of lands and share in the distribution of the moneys and all other property of the Cherokee tribe or people.

TITLES.

SEC. 39. After final ratification of this plan of allotment the Secretary of the Interior shall furnish the principal chief with blank deeds necessary for all conveyances herein provided for, and when any citizen receives his allotment of land, and whenever title should, under the provisions herein set forth, be conveyed, the principal chief shall thereupon proceed to execute in due form, and deliver to him, a deed conveying to him all the right, title, and interest of the Cherokee Nation, and of all other citizens, in and to the lands embraced in his allotment certificate.

SEC. 40. The principal chief shall, in like manner and in like effect, execute and deliver to proper parties deeds of conveyance in all other cases herein provided for. All lands and town lots to be conveyed to one person shall, as far as practicable, be included in one deed, and all deeds shall be executed and recorded free of charge to the allottee.

SEC. 41. All conveyances shall be approved by the Secretary of the Interior, and such approval of the Secretary shall serve as a relinquishment to the grantee of all the right, title, and interest of the United States in and to the lands embraced in his deed.

SEC. 42. The transfer of the title of the Cherokee tribe to individual allottees and to other persons as provided in this plan of allotment shall not inure to the benefit of any railroad company, nor vest in any railroad company any right, title, or interest in or to any of the lands in the Cherokee Nation.

SEC. 43. Any allottee accepting such deed shall be deemed to assent to the allotment and conveyance of all lands of the tribe as provided herein, and as a relinquishment of all his right, title, and interest in and to the same, except in the proceeds of lands reserved from allotment.

SEC. 44. The acceptance of deeds for minors and incompetents by persons authorized to select their allotments for them shall be deemed sufficient to bind such minors and incompetents as to the conveyance of all other lands of the tribe as provided herein.

SEC. 45. All deeds, when executed and approved, shall be filed and recorded as hereinafter provided in section seventy-one.

CHEROKEE ADVOCATE.

SEC. 46. The national newspaper, the Cherokee Advocate, printed in both the Cherokee and English languages, shall continue to be published as at present until the Cherokee Nation shall become part of a State or Territory, when said newspaper plant, including everything connected therewith, excluding the buildings and ground reserved for said newspaper which are herein provided to be otherwise disposed of, shall be sold under the direction of the Secretary of the Interior, and the proceeds divided as other funds of the tribe according to the provisions of section fifty-three.

SCHOOLS.

SEC. 47. The Cherokee school fund shall be used, under the direction of the Secretary of the Interior, for the education of the children of the Cherokee citizens, and the Cherokee schools shall be conducted under rules prescribed by him according to the Cherokee laws, subject to such modifications as he may deem necessary to make the schools most effective and to produce the best possible results, said schools to be under the direct supervision of a supervisor appointed by the Secretary of the Interior and a school board appointed by the national council.

SEC. 48. All teachers shall be examined by or under the direction of said supervisor and said board of education, and competent teachers and other persons to be engaged in and about the schools, with good moral characters only shall be employed, but when all qualifications are equal preference shall be given to citizens of the Cherokee Nation in such employment. All moneys for running these schools shall be appropriated by the Cherokee national council, not exceeding the amount of the Cherokee school fund, but if said council shall fail or refuse to make the necessary appropriations, the Secretary of the Interior shall direct the use of sufficient amount of the school funds to pay all expenses necessary to the efficient conduct of the schools, strict account thereof to be rendered to him and to the principal chief.

SEC. 49. All accounts of expenditures in running the schools shall be examined by said supervisor and board of education and also by the general superintendent of Indian schools in the Indian Territory before the payment thereof is made.

SEC. 50. If the supervisor and the said board of education fail to agree upon any matter under their direct direction and control, it shall be decided by the said gen-

eral superintendent, subject to appeal to the Secretary of the Interior, but h decision shall govern until reversed by the Secretary.

SEC. 51. Said school fund shall be administered so that each Cherokee citizen school age entitled thereto shall have equal benefits therefrom, as nearly as may b

SEC. 52. The interest arising from the Cherokee orphan fund shall in like mann be used, under the direction of the Secretary of the Interior, for maintaining th Cherokee Orphan Asylum for the benefit of the Cherokee orphan children. Th buildings of said asylum, and one hundred and twenty acres of land, to be taken a body, on which they are located, subject to the approval of the Secretary of th Interior, shall be reserved from allotment, and said institution continued in oper tion until allotment is completed.

SEC. 53. When the Cherokee Nation becomes a part of a State or Territory a buildings herein reserved for school and other public purposes belonging to th Cherokees shall be appraised under the direction of the Secretary of the Interior their true values and the amount thereof appropriated by Congress and added to th invested funds for orphan and school purposes, and all of said funds shall be paid p capita to the members of the Cherokee Nation entitled thereto. Such lands an buildings to be disposed of in such manner as Congress may direct.

RESERVATIONS.

SEC. 54. The following lands shall be reserved from the general allotment herei provided:

(*a*) All lands herein set apart for town sites.

(*b*) Two hundred feet wide occupied as a right of way by the Saint Louis an San Francisco Railroad through the Cherokee Nation from Grand River to the we line of the Cherokee Nation near Tulsa, Indian Territory, and the Missouri, Kans and Texas Railroad, and four hundred feet wide occupied by said railroads at all st tions as at present located, said reservations to be used for railroad purposes only.

(*c*) One hundred feet wide occupied as a right of way by the Kansas City South ern, Kansas and Arkansas Valley, Saint Louis and San Francisco from Afton in th Cherokee Nation to the Neosho River opposite Miami, Indian Territory, and fro Grove, in the Cherokee Nation, to the line of the State of Missouri near Southwes City, Missouri; Atchison, Topeka and Santa Fe from the State line near Caney, Kansa to Owasso, and two hundred feet occupied by said railroads at all stations as a present located, said reservations to be used for railroad purposes only.

(*d*) All lands selected for town cemeteries as herein provided, not to exce twenty acres each.

(*e*) All lands specially reserved in this plan of allotment for schools, churche public buildings, and public institutions.

(*f*) Four acres for Willie Halsell College at Vinita.

(*g*) Four acres for the Baptist Mission School at Tahlequah.

(*h*) Four acres for the Presbyterian School at Tahlequah.

(*i*) Four acres for the Parkhill Mission School south of Tahlequah.

(*j*) Four acres for Elm Springs Mission School on Barren Fork.

(*k*) Four acres for Dwight Mission on Sallisaw.

(*l*) Four acres for Lutheran Mission School on Illinois River north of Tahlequah

(*m*) Four acres for Skiatook Mission near Skiatook.

(*n*) Sufficient grounds for burial purposes where neighborhood cemeteries are no located, not to exceed three acres each.

(*o*) One acre for each church house and schoolhouse outside of towns.

(*p*) The square now occupied by the capital building at Tahlequah.

(*q*) The grounds now occupied by the national jail at Tahlequah.

(*r*) The grounds now occupied by the Cherokee Advocate printing office a Tahlequah.

(*s*) Forty acres for the Cherokee National Male Seminary near Tahlequah.

(*t*) Forty acres for the Cherokee National Female Seminary near Tahlequah.

(*u*) One hundred and twenty acres for the Cherokee Orphan Asylum on Gran River.

(*v*) Forty acres for the Colored High School in Tahlequah district.

(*w*) Forty acres for the Cherokee Insane Asylum in Tahlequah district.

(*x*) The lots or parts of lots on which all schools, churches, and parsonages i towns are now located.

Provided, however, That in case any of the above-reserved lots or tracts of land except such as are occupied by churches and parsonages, shall at any time cease t be used for the purposes for which they have been reserved, with the improvement thereon, shall revert to the Cherokee Nation and be sold under the direction of th Secretary of the Interior and the proceeds placed to the credit of the school fund o the Cherokee Nation.

MISCELLANEOUS.

SEC. 55. The tribal government of the Cherokee Nation shall continue until March fourth, nineteen hundred and six, subject to such future legislation as Congress may deem proper.

SEC. 56. The collection of all revenues of whatsoever character belonging to the tribe shall be made by an officer appointed by the Secretary of the Interior, under rules and regulations prescribed by the Secretary, and the expenses of such collection shall be deducted from the funds collected: *Provided*, That any revenue collectors who may be duly appointed under Cherokee law prior to the final ratification of this agreement shall be permitted to serve out the term for which they were appointed.

SEC. 57. No funds belonging to said tribe shall be used or paid out for any purposes by any officer of the United States without the consent of the tribe, expressly given through its national council, except as herein provided.

SEC. 58. All things necessary to carry into effect the provisions herein contained not otherwise herein specifically provided for, shall be done under the authority and direction of the Secretary of the Interior.

SEC. 59. No noncitizen renting lands from a citizen for agricultural purposes, as provided by law, whether such lands have been selected as an allotment or not, shall be required to pay any permit tax.

SEC. 60. The United States shall pay all expenses incident to survey platting, and disposition of town lots, and all allotments of lands made under the provisions of this plan of allotment, except where the town authorities may have been or may be duly authorized to survey and plat their respective towns at the expense of such towns, except when towns are authorized to survey at their own expense.

SEC. 61. If the suit which has been instituted by the Cherokee Nation, and now pending in the Supreme Court of the District of Columbia, against persons claiming to hold leases by authority of the national council of the Cherokee Nation, or otherwise, shall be finally determined against the Cherokee Nation then, in that event, the royalties due the Cherokee Nation from such persons shall be paid to the persons taking allotments on lands upon which such leases may be in operation.

SEC. 62. Any allottee taking as his allotment lands located around the Cherokee National Male Seminary, the Cherokee National Female Seminary, or Cherokee Orphan Asylum which have not been reserved from allotment as herein provided, and upon which buildings, fences, or other property of the Cherokee Nation are located, such buildings, fences, or other property shall be appraised at the true values thereof and be paid for by the allottee takingsuch lands as his allotment, and the money to be paid into the subtreasury of the United States at Saint Louis, Missouri, to the credit of the Cherokee Nation.

SEC. 63. All lands that are now or may hereafter be occupied by any railroads as rights of ways in the Cherokee Nation shall be appraised at their true values as herein provided for agricultural lands, and the railroads shall pay into the subtreasury of the United States at Saint Louis, Missouri, to the credit of the Cherokee Nation, the appraised value thereof, and thereupon title shall be given said railroads by the Cherokee Nation.

SEC. 64. All moneys to be paid to the tribe under the provisions of this plan of allotment shall be paid under the direction of the Secretary of the Interior into the Treasury of the United States to the credit of the tribe, and an itemized report thereof shall be made to the Secretary of the Interior and to the principal chief.

SEC. 65. All funds of the tribe and all moneys accruing under the provisions of this plan of allotment, when required for per capita payments, shall be paid out directly to each individual by a bonded officer of the United States under the direction of the Secretary of the Interior without unnecessary delay; and moneys paid to citizens shall not be liable to the payment of any previously contracted obligation.

SEC. 66. All deferred payments under the provisions of this plan of allotment shall constitute a lien in favor of the tribe on the property for which the debt was contracted, and if default in any annual payment is made, the lien for the payment of all purchase money remaining unpaid may thereupon be enforced in the United States court in the same manner as vendors' liens are enforced, suit therefor to be brought in the name of the principal chief for the benefit of the tribe, or, on his failure for any cause, in the name of the person appointed therefor by the court.

SEC. 67. All other liens may be in like manner enforced after the expiration of two years from the date when the amount secured thereby becomes a charge upon the property.

SEC. 68. The provisions of section thirteen of the act of Congress approved June 28, 1898, entitled "An act for the protection of the people of the Indian Territory, and for other purposes," shall not apply to or in any manner affect the lands or other property of said tribe, and no act or treaty provision inconsistent with this plan of allotment shall be in force in said nation except sections fourteen and twenty-seven

of said last-mentioned act, which shall continue in force as if this plan of allotment had not been made.

SEC. 69. The Secretary of the Interior shall cause to be paid all just indebtedness of said tribe existing at the date of the ratification of this plan of allotment which may have lawfully been contracted and warrants therefor regularly issued upon the several funds of the tribe, as also warrants drawn by authority of law after the ratification of this plan of allotment and prior to the dissolution of the tribal government, such payment to be made from any funds in the United States Treasury belonging to said tribe. And all such indebtedness of the tribe shall be paid in full before any pro rata distribution of the funds of the tribe shall be made.

SEC. 70. The Secretary of the Interior shall make such payments at the earliest time practicable, and he shall make all needful rules and regulations to carry this provision into effect.

SEC. 71. All instruments of writing affecting lands in the Cherokee Nation which lie south of Spavinaw Creek, east of Grand River, and north of the Arkansas River, and all other instruments affecting property in said boundaries, required by law to be recorded, shall be recorded in the office of the clerk of the United States court at Tahlequah; and all instruments of writing affecting lands in said nation lying north of the Arkansas River, north of Spavinaw Creek, and west of Grand River, and all other instruments affecting property in said boundaries, required by law to be recorded, shall be recorded in the office of the clerk of the United States court at Vinita; and all instruments of writing affecting lands in said nation lying south of the Arkansas River, and all other instruments affecting property within said boundaries, required by law to be recorded, shall be recorded in the office of the clerk of the United States court at Muskogee.

SEC. 72. Nothing herein contained shall be construed as forfeiting or abridging the right of said tribe, individual, or any number of individuals thereof to any claim that either of whom may have against the United States, or any State thereof, or the right of prosecuting, testing the right thereto for the collection in any State or United States court, the Court of Claims, or the Supreme Court of the United States, on account of any treaty stipulation, agreement, law, or otherwise with either State or the United States.

SEC. 73. This plan of allotment shall not take effect or be of any validity until ratified by the Congress of the United States, and by a majority of the whole number of votes cast by the legal voters of the Cherokee Nation in the manner following: The principal chief, shall within twenty days after the ratification by the United States, make public proclamation that the same shall be voted upon at a special election to be held for that purpose within forty days thereafter, on a certain date therein named, and he shall appoint such officers and make such other provisions as may be necessary for holding such election. The votes cast at such election shall be forthwith duly certified as required by Cherokee law, and the votes shall be counted by the Cherokee national council, if then in session, and if not in session the principal chief shall convene an extraordinary session for the purpose, in the presence of the representative duly authorized by the Secretary of the Interior and the principal chief, and said representative and the principal chief shall jointly make certificate thereof and proclamation of the result.

Passed the Senate December 14th, 1901.

(Signed in Cherokee) WOLFE COON,
President of Senate.
S. F. PARKS,
Clerk of Senate.

Concurred in by council December 16th, 1901.

M. V. BENGE,
Speaker of Council.
C. S. SHELTON,
Clerk of Council.

Approved December 18th, 1901.
T. M. BUFFINGTON,
Principal Chief Cherokee Nation.

EXECUTIVE OFFICE, CHEROKEE NATION,
Tahlequah, I. T., ——— —, *190*—.

I, T. M. Buffington, principal chief of the Cherokee Nation, do hereby certify that the foregoing is a memorial of the National Council of said Nation passed at its extra session, 1901, and approved by me in my official character on December 18, 1901, and I do hereby submit the same for the approval of the President of the United States under the provisions of the act of Congress of March 3, 1901, entitled "An act

making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1902, and for other purposes."

In witness whereof I have hereunto signed my name as principal chief of the Cherokee Nation on this the 19th day of December, 1901, and caused the great seal of the nation to be affixed.

[SEAL.]

T. M. BUFFINGTON,
Principal Chief Cherokee Nation.

Attest:
J. T. PARKS,
Executive Secretary.

EXHIBIT B.

A BILL To allot the lands of the Cherokee tribe of Indians in Indian Territory, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

DEFINITIONS.

1. The words "nation" and "tribe" shall each be held to refer to the Cherokee Nation or tribe of Indians in Indian Territory.
2. The words "principal chief" or "chief executive" shall be held to mean the principal chief of said tribe.
3. The words "Dawes Commission" or "Commission" shall be held to mean the United States Commission to the Five Civilized Tribes.
4. The word "minor" shall be held to mean males under the age of twenty-one years and females under the age of eighteen years.
5. The terms "allottable lands" or "lands allottable" shall be held to mean all the lands of the Cherokee tribe not herein reserved from allotment.
6. The word "select" and its various modifications, as applied to allotments and homesteads, shall be held to mean the formal application at the land office, to be established by the Dawes Commission for the Cherokee Nation, for particular tracts of land.
7. The words "member" or "members" and "citizen" or "citizens" shall be held to mean members or citizens of the Cherokee Nation in the Indian Territory.
8. Every word in this act importing the masculine gender shall extend and be applied to females as well as males, and the use of the plural shall include also the singular, and vice versa.

APPRAISEMENT OF LANDS.

9. The lands belonging to the Cherokee tribe of Indians in Indian Territory, except such as are herein reserved from allotment, shall be appraised at their true value: *Provided*, That in the determination of the value of such land consideration shall not be given to the location thereof, to any timber thereon, or to any mineral deposits contained therein, and shall be made without reference to improvements which may be located thereon.
10. The appraisement, as herein provided, shall be made by the Commission to the Five Civilized Tribes, under the direction of the Secretary of the Interior.

ALLOTMENT OF LANDS.

11. There shall be allotted by the Commission to the Five Civilized Tribes, to each citizen of the Cherokee tribe, as soon as practicable after the approval by the Secretary of the Interior of his enrollment as herein provided, land equal in value to one hundred acres of the average allottable land of the Cherokee Nation, to conform as nearly as may be to the areas and boundaries established by the Government survey, which land may be selected by each allottee so as to include his improvements.
12. For the purpose of making allotments and designating homesteads hereunder the forty-acre, or quarter of a quarter section subdivisions established by the Government survey, may be dealt with as if further subdivided into four equal parts in the usual manner, thus making the smallest legal subdivision ten acres, or a quarter of a quarter of a quarter of a section.
13. Each member of said tribe shall, at the time of the selection of his allotment, designate as a homestead out of said allotment, land equal in value to forty acres of

the average allottable lands of the Cherokee Nation as nearly as may be, which shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the certificate of allotment. Separate certificate shall issue for said homestead. During the time said homestead is held by the allottee the same shall be nontaxable and shall not be liable for any debt contracted by the owner thereof while so held by him.

14. When the allotments as herein provided have been made to all members, the residue of the lands not herein reserved or otherwise disposed of, if any there be, shall be sold at public auction under rules and regulations to be prescribed by the President of the United States, and whenever said residue of lands shall be so sold the money derived from the sale thereof shall be paid into the Treasury of the United States to the credit of the Cherokees, and distributed per capita as are other funds of the tribe.

15. Lands allotted as herein provided shall not be affected or encumbered by any deed, debt, or obligation of any character contracted prior to the date of the patent, nor shall said lands be sold except as herein provided.

16. All lands allotted to the members of said tribes, except such land as is set aside to each for a homestead as herein provided, shall be alienable after issuance of patent as follows: One-fourth in acreage in one year, one-fourth in acreage in three years, and the balance in five years; in each case from date of patent: *Provided*, That such land shall not be alienable by the allottee or his heirs at any time before the expiration of the Cherokee tribal government for less than its appraised value.

17. If for any reason an allotment should not be selected or a homestead designated by or on behalf of any member of the tribe, it shall be the duty of said commission to make said selection and designation.

18. In the making of allotments and in the designation of homesteads for members of said tribe, said commission shall not be required to divide lands into tracts of less than the smallest legal subdivision provided for in section twelve hereof.

19. It shall be unlawful after ninety days after the approval of this act for any member of the Cherokee tribe to enclose or hold possession of, in any manner, by himself or through another, directly or indirectly, more lands in value than that of one hundred acres of average allotable lands of the Cherokee Nation, either for himself or for his wife, or for each of his minor children, if members of said tribe, and any member of said tribe found in such possession of lands, or having the same in any manner enclosed, after the expiration of ninety days after the date of the approval of this act shall be deemed guilty of a misdemeanor.

20. Any person convicted of violating any of the provisions of section nineteen of this act shall be punished by a fine of not less than one hundred dollars, shall stand committed until such fine and costs are paid (such commitment not to exceed one day for every two dollars of said fine and costs), and shall forfeit possession of any property in question, and each day on which such offense is committed or continues to exist shall be deemed a separate offense. The United States district attorney for the district in which said nation is situated is required to see that the provisions of said section nineteen are strictly enforced, and he shall immediately after the expiration of the ninety days after the approval of this act proceed to dispossess all persons of such excessive holdings of lands and to prosecute them for so unlawfully holding the same, and the Commission to the Five Civilized Tribes shall have authority to make investigations of all violations of section nineteen and make report thereon to the United States district attorney.

21. If any person whose name appears upon the roll prepared as herein provided shall have died subsequent to the first day of July, 1902, and before receiving his allotment of land, the lands to which such persons would have been entitled, if living, shall be allotted in his name, and shall, with his proportionate share of other tribal property, descend to his heirs according to the laws of descent and distribution as provided in chapter forty-nine of Mansfield's Digest of the Statutes of Arkansas: *Provided*, That the allotment thus to be made shall be selected by a duly appointed administrator or executor. If, however, such administrator or executor be not duly and expeditiously appointed, or fails to act promptly when appointed, or for any other cause such selection be not so made within a reasonable and proper time, the Dawes Commission shall designate the lands thus to be allotted.

22. Allotment certificates issued by the Dawes Commission shall be conclusive evidence of the right of an allottee to the tract of land described therein, and the United States Indian Agent for the Union Agency, shall, under the direction of the Secretary of the Interior, upon the application of the allottee, place him in possession of his allotment, and shall remove therefrom all persons objectionable to him, and the acts of the Indian agent hereunder shall not be controlled by the writ or process of any court.

23. Exclusive jurisdiction is hereby conferred upon the Commission to the Five

Civilized Tribes, under the direction of the Secretary of the Interior, to determine all matters relative to the appraisement and the allotment of lands.

24. All Delaware Indians who are members of the Cherokee Nation, shall take lands and share in the funds of the tribe, as their rights may be determined by the judgment of the Court of Claims, or by the Supreme Court, if appealed, in the suit instituted therein by the Delawares against the Cherokee Nation, and now pending, but if said suit be not determined before said Commission is ready to begin the allotment of lands of the tribe as herein provided, the Commission shall cause to be segregated one hundred and fifty-seven thousand and six hundred acres of land, including lands which have been selected and occupied by Delawares in conformity to the provisions of their agreement with the Cherokees, dated April 8, 1867, such lands so to remain, subject to the disposition according to such judgment as may be rendered in said cause, and said Commission shall thereupon proceed to the allotment of the remaining lands of the tribe as aforesaid. Said Commission shall, when final judgment is rendered, allot lands to such Delawares in conformity to the terms of the judgment and their individual rights thereunder. Nothing in this act shall in any manner impair the rights of either party to said contract as the same may be finally determined by the court, or shall interfere with the holdings of the Delawares under their contract with the Cherokees of April 8, 1867, until their rights under said contract are determined by the courts in their suit now pending against the Cherokees.

RESERVATIONS.

25. The following lands shall be reserved from the allotment of lands herein provided for:

(*a*) All lands set apart for town sites by the provisions of the act of Congress of June 28, 1898 (30 Stats., 495), the provisions of the act of Congress of May 31, 1900 (31 Stat., 221), and by the provisions of this act.

(*b*) All lands to which, upon the date of the approval of this act, any railroad company may, under any treaty or act of Congress, have a vested right for right of way, depots, station grounds, water stations, stock yards, or similar uses, connected with the maintenance and operation of the railroad.

(*c*) All lands selected for town cemeteries as herein provided.

(*d*) One acre of land for each schoolhouse not included in town sites as herein provided.

(*e*) One hundred and sixty acres for Willie Halsell College at Vinita.

(*f*) Four acres for Baptist Mission school at Tahlequah.

(*g*) Four acres for Presbyterian school at Tahlequah.

(*h*) Four acres for Park Hill Mission school south of Tahlequah.

(*i*) Four acres for Elm Springs Mission school at Barren Fork.

(*j*) Forty acres for Dwight Mission school at Sallisaw.

(*k*) Four acres for Skiatook Mission near Skiatook.

(*l*) Four acres for Lutheran Mission school on Illinois River north of Tahlequah.

(*m*) Sufficient ground for burial purposes where neighborhood cemeteries are now located, not to exceed three acres each.

(*n*) One acre for each church house outside of towns.

(*o*) The square now occupied by the capitol building at Tahlequah.

(*p*) The grounds now occupied by the national jail at Tahlequah.

(*q*) The grounds now occupied by the Cherokee Advocate printing office at Tahlequah.

(*r*) Forty acres for the Cherokee Male Seminary near Tahlequah.

(*s*) Forty acres for the Cherokee Female Seminary at Tahlequah.

(*t*) One hundred and twenty acres for the Cherokee Orphan Asylum on Grand River.

(*u*) Forty acres for colored high school in Tahlequah District.

(*v*) Forty acres for the Cherokee Insane Asylum.

(*w*) Forty acres for the school for the blind, deaf, and dumb children near Fort Gibson.

(*x*) All lands which shall be segregated and reserved by the Secretary of the Interior on account of their mineral deposits, as hereinafter provided.

The acre so reserved for any church or schoolhouse in any quarter section of land shall be located in a corner of such quarter section lying adjacent to the section line thereof.

ROLL OF CITIZENSHIP.

26. The roll of citizens of the Cherokee Nation shall be made as of July, 1, 1902, and the names of all persons then living and entitled to enrollment on that date shall be placed on said roll by the Commission to the Five Civilized Tribes.

27. The names of all persons living on the first day of July, 1902, entitled to be enrolled as provided in section 26 hereof shall be placed upon the roll made by said Commission, and no child born thereafter to a citizen, and no white person who has intermarried with a Cherokee citizen since the sixteenth day of December, 1895, shall be entitled to enrollment or to participate in the distribution of the tribal property of the Cherokee Nation.

28. Such roll shall in all other respects be made in strict compliance with the provisions of section twenty-one of the act of Congress approved June 28, 1898 (30 Stats., 495), and the act of Congress approved May 31, 1900 (31 Stats., 221).

29. No person whose name appears upon the roll made by the Dawes Commission as a citizen or freedman of any other tribe shall be enrolled as a citizen of the Cherokee Nation.

30. For the purpose of expediting the enrollment of the Cherokee citizens and the allotment of lands as herein provided, the said Commission shall, from time to time, and as soon as practicable, forward to the Secretary of the Interior lists upon which shall be placed the names of those persons found by the Commission to be entitled to enrollment. The lists thus prepared, when approved by the Secretary of the Interior, shall constitute a part and parcel of the final roll of citizens of the Cherokee tribe, upon which allotment of land and distribution of other tribal property shall be made. When there shall have been submitted to and approved by the Secretary of the Interior lists embracing the names of all those lawfully entitled to enrollment, the roll shall be deemed complete. The roll so prepared shall be made in quadruplicate, one to be deposited with the Secretary of the Interior, one with the Commissioner of Indian Affairs, one with the principal chief of the Cherokee Nation, and one to remain with the Commission to the Five Civilized Tribes.

31. During the months of July and August, in the year 1902, the Commission to the Five Civilized Tribes may receive applications for enrollment of such infant children as may have been born to recognized and enrolled citizens of the Cherokee nation on or before the first day of July, 1902, but the application of no person whomsoever for enrollment shall be received after the thirty-first day of August, 1902.

32. No person whose name does not appear upon the roll prepared as herein provided shall be entitled to in any manner participate in the distribution of the common property of the Cherokee tribe, and those whose names appear thereon shall participate in the manner set forth in this act: *Provided*, That no allotment of land or orther tribal property shall be made to any person or to the heirs of any person whose name is on said roll and who died prior to the first day of July, 1902.

The right of such persons to any interest in the lands or other tribal property shall be deemed to have become extinguished and to have passed to the tribe in general upon his death before said date, and any person or persons who may conceal the death of anyone on said roll as aforesaid for the purpose of profiting by said concealment, and who shall knowingly receive any portion of any land or other tribal property or of the proceeds so arising from any allotment prohibited by this section, shall be deemed guilty of a felony, and shall be proceeded against as may be provided as in other cases of felony, and the penalty for this offense shall be confinement at hard labor for a period of not less than one year nor more than five years, and in addition thereto a forfeiture to the Cherokee Nation of the lands, other tribal property, and proceeds so obtained.

TOWN SITES.

33. The lands which may hereafter be set aside and reserved for town sites upon the recommendation of the Dawes Commission under the provisions of the act of Congress approved May 31, 1900 (31 Stat., 221), shall embrace such acreage as may be necessary for the present needs and reasonable prospective growth of such town sites, not to exceed six hundred and forty acres for each town site.

34. Whenever any tract of land shall be set aside by the Secretary of the Interior for town-site purposes, as provided in said act of May 25, 1900, or by the terms of this act, which is occupied at the time of such segregation by any member of the Cherokee Nation, such occupant shall be allowed to purchase any lot upon which he then has improvements other than fences, tillage, and temporary improvements, in accordance with the provisions of the act of June 28, 1898 (30 Stat., 495), or, if he so elects, the lot will be sold as hereinafter provided, and he shall be fully compensated for his improvements thereon out of the funds of the tribe arising from the sale of the town sites, under rules and regulations to be prescribed by the Secretary of the Interior, the value of such improvements to be determined by a board of appraisers, one member of which shall be appointed by the Secretary of the Interior, one by the chief executive of the tribe, and one by the occupant of the land, said board of

appraisers to be paid such compensation for their services as may be determined by the Secretary of the Interior out of any appropriations for surveying, laying out, platting, and selling town sites.

35. Whenever the chief executive of the Cherokee Nation fails or refuses to appoint a town-site commissioner for any town, or to fill any vacancy caused by the neglect or refusal of the town-site commissioners appointed by the chief executive to qualify or act, or otherwise, the Secretary of the Interior, in his discretion, may appoint a commissioner to fill the vacancy thus created.

36. Such towns in the Cherokee Nation as may have a population of less than two hundred people not otherwise provided for, and which, in the judgment of the Secretary of the Interior, should be set aside as town sites, shall have their limits defined as soon as practicable after the approval of this act in the same manner as provided for other town sites under existing law.

37. All town sites heretofore set aside by the Secretary of the Interior on the recommendation of the Commission to the Five Civilized Tribes under the provisions of the act of Congress approved May 31, 1900 (31 Stats., 221), with the additional acreage added thereto, and all town sites which may be hereafter so set aside, as well as all town sites set aside under the provisions of this act, having a population of less than two hundred, shall, after being divided into lots and blocks, and a map or plat thereof made as required by law, be sold at public auction to the highest bidder, and each lot shall be sold separately. The appraisals of said town lots shall be made as now provided by law for the valuation of improved town lots, and the purchaser of each of said town lots shall within ten days from the date of his purchase pay into the Treasury of the United States, to the credit of the Cherokee tribe, one-third of the purchase price, and the balance in two equal annual installments without interest, and when the entire sum is paid he shall be entitled to a patent for the same; and no lot shall be sold at public auction at less than its appraised value.

Provided, however, That if any lot is occupied by any member of the Cherokee Nation upon which at the time of such segregation heretofore made he had improvements other than fencing, tillage, and temporary improvements, or if any lot is so occupied and improved at the time of any segregation hereafter made, such occupant shall be allowed to purchase such lot in accordance with the provisions of the act of June 28, 1898 (30 Stat., 495), or, if he elects, the lot will be sold and he shall be fully compensated for his improvements as provided in section thirty-four hereof: *And provided further*, That when any lot sold at public auction shall have thereon improvements erected by a person claiming possessory right to such lot, said improvements shall be appraised by a committee, one member of which shall be selected by the owner of the improvements and one member by the purchaser of said lot; and in case the said committee is not able to agree upon the value of said improvements, the committee may select a third member, and in that event the determination of the majority of the committee shall control. Said committee of appraisement shall be paid such compensation for their services by the two parties in interest, share and share alike, as may be agreed upon, and the amount of said appraisement shall be paid by the purchaser of the lot to the owner of the improvements in cash within thirty days after the decision of the committee of appraisement.

38. The purchaser of any town lot may at any time pay the full amount of the purchase money, and he shall thereupon receive title therefor.

39. Any person may bid for and purchase any lot sold at public auction as herein provided.

40. The town authorities of any town site in said Cherokee Nation may select and locate, subject to the approval of the Secretary of the Interior, a cemetery within suitable distance from such town, to embrace such number of acres as may be deemed necessary for such purpose. The town-site commission shall appraise the same at its true value, and the town may purchase the same within one year from the approval of the survey by paying the appraised value. If any citizen have improvements thereon, said improvements shall be appraised by said town-site commission and paid for by the town: *Provided*, That lands already laid out by tribal authorities for cemeteries shall be included in the cemeteries herein provided for without cost to the towns, and the holding of the burial lots therein now occupied for such purpose shall in no wise be disturbed: *And provided further*, That any park laid out and surveyed in any town shall be duly appraised at a fair valuation, and the inhabitants of said town shall, within one year after the approval of the survey and the appraisement of said park by the Secretary of the Interior, pay the appraised value to the proper officer for the benefit of the tribe or tribes entitled thereto.

41. The United States may purchase in any town in the Cherokee Nation suitable lands for court-houses, jails, or other necessary public purposes for its use by paying the appraised value thereof, the same to be selected under the direction of the

department for whose use such lands are needed, and if any person have improvements thereon the same shall be appraised in like manner as other town property, and shall be paid for by the United States.

SCHOOLS.

42. The Cherokee school fund shall be used, under the direction of the Secretary of the Interior, for the education of children of Cherokee citizens, and the Cherokee schools shall be conducted under rules prescribed by him according to Cherokee laws, subject to such modifications as he may deem necessary to make the schools most effective and to produce the best possible results, said schools to be under the direct supervision of a supervisor appointed by the Secretary.

43. All teachers shall be examined by or under direction of said supervisor, and competent teachers and other persons to be engaged in and about the schools with good moral character only shall be employed, but where all qualifications are equal, preference shall be given to citizens of the Cherokee Nation in such employment.

44. All moneys for carrying on the schools shall be appropriated by the Cherokee national council, not to exceed the amount of the Cherokee school fund, but if the council fail or refuse to make the necessary appropriations, the Secretary of the Interior may direct the use of sufficient amount of the school fund to pay all necessary expenses to the efficient conduct of the schools, strict account therefor to be rendered to him and the principal chief.

45. All accounts for expenditures in carrying on the schools shall be examined and approved by said supervisor, and also by the general superintendent of Indian schools in Indian Territory, before payment thereof is made.

46. The interest arising from the Cherokee orphan fund shall be used, under the direction of the Secretary of the Interior, for maintaining the Cherokee Orphan Asylum for the benefit of the Cherokee orphan children.

TITLES.

47. The Secretary of the Interior shall furnish the principal chief with blank patents necessary for all conveyances herein provided for, and when any citizen receives his allotment of land, or when any allotment has been so ascertained and fixed that title should under the provisions of this act be conveyed, the principal chief shall thereupon proceed to execute and deliver to him a patent conveying all the right, title, and interest of the Cherokee Nation, and of all other citizens, in and to the lands embraced in his allotment certificate.

48. All conveyances shall be approved by the Secretary of the Interior, which shall serve as a relinquishment to the grantee of all the right, title, and interest of the United States in and to the lands embraced in his patent.

49. Any allottee accepting such patent shall be deemed to assent to the allotment and conveyance of all the lands of the tribe as provided in this act, and to relinquish all his right, title, and interest to the same, except in the proceeds of lands reserved from allotment.

50. The acceptance of patents for minors and incompetents by persons authorized to select their allotments for them shall be deemed sufficient to bind such minors and incompetents as to the conveyance of all other lands of the tribe.

51. All patents, when so executed and approved, shall be filed in the office of the Dawes Commission, and recorded in a book provided for the purpose, until such time as Congress shall make other suitable provision for record of land titles, without expense to the grantee, and such records shall have like effect as other public records.

MINERAL LANDS.

52. Within six months after the approval of this act the Secretary of the Interior shall ascertain, so far as may seem to him practicable, what lands in the Cherokee Nation are principally valuable because of their deposits of oil, coal, asphalt, and other minerals of whatever character, including therein all lands which at the time of the approval of this act shall be covered by then existing and subsisting leases, and all lands which at the time of the approval of this act shall be covered by contracts made with the Cherokee Nation, or with individual members thereof, under the laws or customs of said nation prior to the approval of the act of June 28, 1898 (30 Stat., 495), and where said parties or their assigns have entered upon said lands under said leases or contracts prior to June 28, 1898, and produced minerals in commercial quantities, the Secretary of the Interior, as soon as practicable after ascertaining what lands are mineral, shall segregate and reserve the same from allotment.

Such segregation and reservation shall conform to the subdivisions of the Governt ment survey as nearly as may be, and the total segregation and reservation shall no exceed two hundred thousand acres.

The lands segregated and reserved as herein provided shall not be allotted to any member of the Cherokee Nation, but the improvements of any such member existing upon any of said lands, except those covered by leases and contract as above indicated, at the time of their segregation and reservation shall be appraised under the direction of the Secretary of the Interior, and said improvements shall be paid for out of any funds of the tribe in the Treasury of the United States upon the order of the Secretary of the Interior. All mineral deposits of whatever character which may be found in any lands not so segregated and reserved shall be deemed a part of the land and shall pass to the allottee or other person who may lawfully acquire title to such lands.

53. All lands segregated and reserved under the terms of section fifty-two, excepting those embraced within the limits of a town site established under said act of June 28, 1898, the act of May 31, 1900, or under this act, shall, after the expiration of two years from the date of the approval of this act and before the dissolution of the tribal government, be sold at public auction under the direction of the President of the United States, and the proceeds thereof deposited in the Treasury of the United States to the credit of said tribe and paid out per capita to the members thereof, with the other moneys belonging to said tribe, in the manner provided by law. The lands embraced within any subsisting mineral lease or contract as set forth in section fifty-two shall be separately sold, subject to such lease or contract, and the purchaser shall succeed to all the rights of the tribe or individual members making such lease or contract of every kind and character thereunder. The other mineral lands so segregated and reserved shall be sold in tracts not exceeding in area a section under the Government survey. No lease of any mineral lands shall be made after the date of the approval of this act.

54. At the expiration of two years after the approval of this act all deposits of coal and asphalt, which are in lands within the limits of any town site established under the act of June 28, 1898, or the act of Congress of May 31, 1900, or this act, and which are within the exterior limits of any lands reserved from allotment on account of their coal or asphalt deposits, as herein provided, and which are not at the time of the final ratification of this act embraced in any then existing mineral lease or contract as set forth in section fifty-two, shall be sold at public auction under the direction of the President, and the proceeds thereof disposed of as herein provided respecting the proceeds of the sale of other mineral lands.

55. Upon the recommendation of the principal chief, and where in the judgment of the President it is advantageous to the tribe so to do, the sale of any mineral lands which are herein directed to be sold may be made at any time after the expiration of six months from the date of the approval of this act without awaiting the expiration of the period of two years as hereinbefore provided.

56. The principal chief of the tribe shall execute and deliver, with the approval of the Secretary of the Interior, to each purchaser of any mineral lands so sold an appropriate patent or instrument of conveyance conveying to the purchaser the property so sold.

MISCELLANEOUS.

57. The tribal government of the Cherokee Nation shall not continue longer than March 4, 1906.

58. The collection of all revenues of whatsoever character belonging to the tribe shall be made by an officer appointed by the Secretary of the Interior, under rules and regulations to be prescribed by the said Secretary.

59. All things necessary to carry into effect the provisions of this act, not otherwise herein specifically provided for, shall be done under the authority and direction of the Secretary of the Interior.

60. All funds of the tribe, and all moneys accruing under the provisions of this act, shall be paid out under the direction of the Secretary of the Interior, and when required for per capita payments shall be paid directly to each individual by an appointed officer of the United States, under the direction of the Secretary of the Interior.

61. Cherokee citizens may rent their allotments, after receiving certificates therefor, for a term not exceeding five years, under rules and regulations to be prescribed by the Secretary of the Interior, and cattle grazed on such allotments shall not be liable for any tribal tax. No cattle shall hereafter be introduced into the Cherokee Nation and grazed on lands not selected by citizens as allotments, unless per-

mission therefor has been granted by the principal chief and approved by the Secretary of the Interior, in which case the Secretary is authorized to collect from the owners of such cattle a reasonable grazing tax for the benefit of the tribe. Section twenty-one hundred and seventeen of the Revised Statutes of the United States shall not apply to Cherokee lands, and no penalties or tax already accrued under said section shall be collectible.

62. The Secretary of the Interior shall cause to be paid all just indebtedness of said tribe existing at the date of the approval of this act which may have lawfully been contracted, and warrants therefor regularly issued upon the several funds of the tribe, as also warrants drawn by authority of law hereafter and prior to the dissolution of the tribal government, such payments to be made from any funds in the United States Treasury belonging to said tribe, and all such indebtedness of the tribe shall be paid in full before any pro rata distribution of the funds of the tribe shall be made. The Secretary of the Interior shall make such payments at the earliest time practicable and he shall make all needed rules and regulations to carry this provision into effect.

63. Jurisdiction is hereby conferred upon the Court of Claims to examine, consider, and adjudicate, with a right of appeal to the Supreme Court of the United States by any party in interest feeling aggrieved at the decision of the Court of Claims, any claim which the Cherokee tribe, or any band thereof, arising under treaty stipulations, may have against the United States, upon which suit shall be instituted within two years after the approval of this Act; and also to examine, consider, and adjudicate any claim which the United States may have against said tribe, or any band thereof. The institution, prosecution, or defense, as the case may be, on the part of the tribe or any band, of any such suit, shall be through attorneys employed and to be compensated in the manner prescribed in sections twenty-one hundred and three to twenty-one hundred and six, both inclusive, of the Revised Statutes of the United States, the tribe acting through its principal chief in the employment of such attorneys, and the band acting through a committee recognized by the Secretary of the Interior. The Court of Claims shall have full authority, by proper orders and process, to make parties to any such suit all persons whose presence in the litigation it may deem necessary or proper to the final determination of the matter in controversy, and any such suit shall, on motion of either party, be advanced on the docket of either of said courts and be determined at the earliest practicable time.

64. After the expiration of nine months after the date of the original selection of an allotment by or for any citizen of the Cherokee tribe as provided in this act, no contest shall be instituted against such selection, and as early thereafter as practicable, patent shall issue therefor.

65. Allotments may be selected, and homesteads designated for minors by the father or mother, if citizens, or by a guardian, or curator, or the administrator having charge of their estate, in the order named; and for prisoners, convicts, aged and infirm persons, and soldiers and sailors of the United States on duty outside of the Indian Territory, by duly appointed agents under power of attorney; and for incompetents by guardians, curators, or other suitable persons akin to them; but it shall be the duty of said Commission to see that said selections are made for the best interests of such parties.

66. That all acts and portions of acts or treaty provisions in conflict with any of the provisions of this act, shall not be in force in the Cherokee Nation after the approval of this act.

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[PUBLIC—No. 241.]

An Act To provide for the allotment of the lands of the Cherokee Nation, for the disposition of town sites therein, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DEFINITION OF WORDS EMPLOYED HEREIN.

SECTION 1. The words "nation" and "tribe" shall each be held to refer to the Cherokee Nation or tribe of Indians in Indian Territory.

SEC. 2. The words "principal chief" or "chief executive" shall be held to mean the principal chief of said tribe.

SEC. 3. The words "Dawes Commission" or "Commission" shall be held to mean the United States Commission to the Five Civilized Tribes.

SEC. 4. The word "minor" shall be held to mean males under the age of twenty-one years and females under the age of eighteen years.

SEC. 5. The terms "allottable lands" or "lands allottable" shall be held to mean all the lands of the Cherokee tribe not herein reserved from allotment.

SEC. 6. The word "select" and its various modifications, as applied to allotments and homesteads, shall be held to mean the formal application at the land office, to be established by the Dawes Commission for the Cherokee Nation, for particular tracts of land.

SEC. 7. The words "member" or "members" and "citizen" or "citizens" shall be held to mean members or citizens of the Cherokee Nation, in the Indian Territory.

SEC. 8. Every word in this Act importing the masculine gender may extend and be applied to females as well as males, and the use of the plural may include also the singular, and vice versa.

APPRAISEMENT OF LANDS.

SEC. 9. The lands belonging to the Cherokee tribe of Indians in Indian Territory, except such as are herein reserved from allotment, shall be appraised at their true value: *Provided*, That in the determination of the value of such land consideration shall not be given to the location thereof, to any timber thereon, or to any mineral deposits contained therein, and shall be made without reference to improvements which may be located thereon.

SEC. 10. The appraisement, as herein provided, shall be made by the Commission to the Five Civilized Tribes, under the direction of the Secretary of the Interior.

ALLOTMENT OF LANDS.

SEC. 11. There shall be allotted by the Commission to the Five Civilized Tribes and to each citizen of the Cherokee tribe, as soon as practicable after the approval by the Secretary of the Interior of his

enrollment as herein provided, land equal in value to one hundred and ten acres of the average allottable lands of the Cherokee Nation, to conform as nearly as may be to the areas and boundaries established by the Government survey, which land may be selected by each allottee so as to include his improvements.

SEC. 12. For the purpose of making allotments and designating homesteads hereunder, the forty-acre, or quarter of a quarter section, subdivision established by the Government survey may be dealt with as if further subdivided into four equal parts in the usual manner, thus making the smallest legal subdivision ten acres, or a quarter of a quarter of a quarter of a section.

SEC. 13. Each member of said tribe shall, at the time of the selection of his allotment, designate as a homestead out of said allotment land equal in value to forty acres of the average allotable lands of the Cherokee Nation, as nearly as may be, which shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the certificate of allotment. Separate certificate shall issue for said homestead. During the time said homestead is held by the allottee the same shall be nontaxable and shall not be liable for any debt contracted by the owner thereof while so held by him.

SEC. 14. Lands allotted to citizens shall not in any manner whatever or at any time be encumbered, taken, or sold to secure or satisfy any debt or obligation, or be alienated by the allottee or his heirs, before the expiration of five years from the date of the ratification of this Act.

SEC. 15. All lands allotted to the members of said tribe, except such land as is set aside to each for a homestead as herein provided, shall be alienable in five years after issuance of patent.

SEC. 16. If for any reason an allotment should not be selected or a homestead designated by or on behalf of any member of the tribe, it shall be the duty of said Commission to make said selection and designation.

SEC. 17. In the making of allotments and in the designation of homesteads for members of said tribe, said Commission shall not be required to divide lands into tracts of less than the smallest legal subdivision provided for in section twelve hereof.

SEC. 18. It shall be unlawful after ninety days after the ratification of this Act by the Cherokees for any member of the Cherokee tribe to inclose or hold possession of, in any manner, by himself or through another, directly or indirectly, more lands in value than that of one hundred and ten acres of average allottable lands of the Cherokee Nation, either for himself or for his wife, or for each of his minor children, if members of said tribe; and any member of said tribe found in such possession of lands, or having the same in any manner inclosed, after the expiration of ninety days after the date of the ratification of this Act shall be deemed guilty of a misdemeanor.

SEC. 19. Any person convicted of violating any of the provisions of section eighteen of this Act shall be punished by a fine of not less than one hundred dollars, shall stand committed until such fine and costs are paid (such commitment not to exceed one day for every two dollars of said fine and costs), and shall forfeit possession of any property in question, and each day on which such offense is committed or continues to exist shall be deemed a separate offense. The United States district attorney for the northern district is required to see that the provisions of said section eighteen are strictly enforced, and he shall immediately,

after the expiration of the ninety days after the ratification of this Act, proceed to dispossess all persons of such excessive holdings of lands and to prosecute them for so unlawfully holding the same, and the Commission to the Five Civilized Tribes shall have authority to make investigations of all violations of section eighteen and make report thereon to the United States district attorney.

SEC. 20. If any person whose name appears upon the roll prepared as herein provided shall have died subsequent to the first day of September, nineteen hundred and two, and before receiving his allotment, the lands to which such person would have been entitled if living shall be allotted in his name, and shall, with his proportionate share of other tribal property, descend to his heirs according to the laws of descent and distribution as provided in chapter forty-nine of Mansfield's Digest of the Statutes of Arkansas: *Provided*, That the allotment thus to be made shall be selected by a duly appointed administrator or executor. If, however, such administrator or executor be not duly and expeditiously appointed, or fails to act promptly when appointed, or for any other cause such selection be not so made within a reasonable and proper time, the Dawes Commission shall designate the lands thus to be allotted.

SEC. 21. Allotment certificates issued by the Dawes Commission shall be conclusive evidence of the right of an allottee to the tract of land described therein, and the United States Indian agent for the Union Agency shall, under the direction of the Secretary of the Interior, upon the application of the allottee, place him in possession of his allotment, and shall remove therefrom all persons objectionable to him, and the acts of the Indian agent hereunder shall not be controlled by the writ or process of any court.

SEC. 22. Exclusive jurisdiction is hereby conferred upon the Commission to the Five Civilized Tribes, under the direction of the Secretary of the Interior, to determine all matters relative to the appraisement and the allotment of lands.

SEC. 23. All Delaware Indians who are members of the Cherokee Nation shall take lands and share in the funds of the tribe, as their rights may be determined by the judgment of the Court of Claims, or by the Supreme Court if appealed, in the suit instituted therein by the Delawares against the Cherokee Nation, and now pending; but if said suit be not determined before said Commission is ready to begin the allotment of lands of the tribe as herein provided, the Commission shall cause to be segregated one hundred and fifty-seven thousand six hundred acres of land, including lands which have been selected and occupied by Delawares in conformity to the provisions of their agreement with the Cherokees dated April eighth, eighteen hundred and sixty-seven, such lands so to remain, subject to disposition according to such judgment as may be rendered in said cause; and said Commission shall thereupon proceed to the allotment of the remaining lands of the tribe as aforesaid. Said Commission shall, when final judgment is rendered, allot lands to such Delawares in conformity to the terms of the judgment and their individual rights thereunder. Nothing in this Act shall in any manner impair the rights of either party to said contract as the same may be finally determined by the court, or shall interfere with the holdings of the Delawares under their contract with the Cherokees of April eighth, eighteen hundred and sixty-seven, until their rights under said contract are determined by the courts in their suit now

pending against the Cherokees, and said suit shall be advanced on the dockets of said courts and determined at the earliest time practicable.

RESERVATIONS.

SEC. 24. The following lands shall be reserved from the allotment of lands herein provided for:

(a) All lands set apart for town sites by the provisions of the Act of Congress of June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), the provisions of the Act of Congress of May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one), and by the provisions of this Act.

(b) All lands to which, upon the date of the ratification of this Act, any railroad company may, under any treaty or Act of Congress, have a vested right for right of way, depots, station grounds, water stations, stock yards, or similar uses only, connected with the maintenance and operation of the railroad.

(c) All lands selected for town cemeteries not to exceed twenty acres each.

(d) One acre of land for each Cherokee schoolhouse not included in town sites or herein otherwise provided for.

(e) Four acres for Willie Halsell College at Vinita.

(f) Four acres for Baptist Mission school at Tahlequah.

(g) Four acres for Presbyterian school at Tahlequah.

(h) Four acres for Park Hill Mission school south of Tahlequah.

(i) Four acres for Elm Springs Mission school at Barren Fork.

(j) Four acres for Dwight Mission school at Sallisaw.

(k) Four acres for Skiatook Mission near Skiatook.

(l) Four acres for Lutheran Mission school on Illinois River north of Tahlequah.

(m) Sufficient ground for burial purposes where neighborhood cemeteries are now located, not to exceed three acres each.

(n) One acre for each church house outside of towns.

(o) The square now occupied by the capitol building at Tahlequah.

(p) The grounds now occupied by the national jail at Tahlequah.

(q) The grounds now occupied by the Cherokee Advocate printing office at Tahlequah.

(r) Forty acres for the Cherokee Male Seminary near Tahlequah.

(s) Forty acres for the Cherokee Female Seminary at Tahlequah.

(t) One hundred and twenty acres for the Cherokee Orphan Asylum on Grand River.

(u) Forty acres for colored high school in Tahlequah district.

(v) Forty acres for the Cherokee Insane Asylum.

(w) Four acres for the school for blind, deaf, and dumb children near Fort Gibson.

The acre so reserved for any church or schoolhouse in any quarter section of land shall be located where practicable in a corner of such quarter section adjacent to the section lines thereof.

Provided, That the Methodist Episcopal Church South may, within twelve months after the ratification of this Act, pay ten dollars per acre for the one hundred and sixty acres of land adjacent to the town of Vinita, and heretofore set apart by act of the Cherokee national council for the use of said church for missionary and educational purposes, and now occupied by Willie Halsell College (formerly Galloway

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College), and shall thereupon receive title thereto; but if said church fail so to do it may continue to occupy said one hundred and sixty acres of land as long as it uses same for the purposes aforesaid.

Any other school or college in the Cherokee Nation which claims to be entitled under the law to a greater number of acres than is set apart for said school or college by section twenty-four of this Act may have the number of acres to which it is entitled by law. The trustees of such school or college shall, within sixty days after the ratification of this Act, make application to the Secretary of the Interior for the number of acres to which such school or college claims to be entitled, and if the Secretary of the Interior shall find that such school or college is, under the laws and treaties of the Cherokee Nation in force prior to the ratification of this Act, entitled to a greater number of acres of land than is provided for in this Act, he shall so determine and his decision shall be final. The amount so found by the Secretary of the Interior shall be set apart for the use of such college or school as long as the same may be used for missionary and educational purposes: *Provided*, That the trustees of such school or college shall pay ten dollars per acre for the number of acres so found by the Secretary of the Interior and which have been heretofore set apart by act of the Cherokee national council for use of such school or college for missionary or educational purposes, and upon the payment of such sum within sixty days after the decision of the Secretary of the Interior said college or school may receive a title to such land.

ROLL OF CITIZENSHIP.

SEC. 25. The roll of citizens of the Cherokee Nation shall be made as of September first, nineteen hundred and two, and the names of all persons then living and entitled to enrollment on that date shall be placed on said roll by the Commission to the Five Civilized Tribes.

SEC. 26. The names of all persons living on the first day of September, nineteen hundred and two, entitled to be enrolled as provided in section twenty-five hereof, shall be placed upon the roll made by said Commission, and no child born thereafter to a citizen, and no white person who has intermarried with a Cherokee citizen since the sixteenth day of December, eighteen hundred and ninety-five, shall be entitled to enrollment or to participate in the distribution of the tribal property of the Cherokee Nation.

SEC. 27. Such rolls shall in all other respects be made in strict compliance with the provisions of section twenty-one of the Act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), and the Act of Congress approved May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one).

SEC. 28. No person whose name appears upon the roll made by the Dawes Commission as a citizen or freedman of any other tribe shall be enrolled as a citizen of the Cherokee Nation.

SEC. 29. For the purpose of expediting the enrollment of the Cherokee citizens and the allotment of lands as herein provided, the said Commission shall, from time to time, and as soon as practicable, forward to the Secretary of the Interior lists upon which shall be placed the names of those persons found by the Commission to be entitled to enrollment. The lists thus prepared, when approved by the Secretary

of the Interior, shall constitute a part and parcel of the final roll of citizens of the Cherokee tribe, upon which allotment of land and distribution of other tribal property shall be made. When there shall have been submitted to and approved by the Secretary of the Interior lists embracing the names of all those lawfully entitled to enrollment, the roll shall be deemed complete. The roll so prepared shall be made in quadruplicate, one to be deposited with the Secretary of the Interior, one with the Commissioner of Indian Affairs, one with the principal chief of the Cherokee Nation, and one to remain with the Commission to the Five Civilized Tribes.

SEC. 30. During the months of September and October, in the year nineteen hundred and two, the Commission to the Five Civilized Tribes may receive applications for enrollment of such infant children as may have been born to recognized and enrolled citizens of the Cherokee Nation on or before the first day of September, nineteen hundred and two, but the application of no person whomsoever for enrollment shall be received after the thirty-first day of October, nineteen hundred and two.

SEC. 31. No person whose name does not appear upon the roll prepared as herein provided shall be entitled to in any manner participate in the distribution of the common property of the Cherokee tribe, and those whose names appear thereon shall participate in the manner set forth in this Act: *Provided*, That no allotment of land or other tribal property shall be made to any person, or to the heirs of any person, whose name is on said roll and who died prior to the first day of September, nineteen hundred and two. The right of such person to any interest in the lands or other tribal property shall be deemed to have become extinguished and to have passed to the tribe in general upon his death before said date, and any person or persons who may conceal the death of anyone on said roll as aforesaid for the purpose of profiting by said concealment, and who shall knowingly receive any portion of any land or other tribal property or of the proceeds so arising from any allotment prohibited by this section, shall be deemed guilty of a felony, and shall be proceeded against as may be provided in other cases of felony, and the penalty for this offense shall be confinement at hard labor for a period of not less than one year nor more than five years, and in addition thereto a forfeiture to the Cherokee Nation of the lands, other tribal property, and proceeds so obtained.

SCHOOLS.

SEC. 32. The Cherokee school fund shall be used, under the direction of the Secretary of the Interior, for the education of children of Cherokee citizens, and the Cherokee schools shall be conducted under rules prescribed by him according to Cherokee laws, subject to such modifications as he may deem necessary to make the schools most effective and to produce the best possible results; said schools to be under the supervision of a supervisor appointed by the Secretary and a school board elected by the national council.

SEC. 33. All teachers shall be examined by said supervisor, and said school board and competent teachers and other persons to be engaged in and about the schools with good moral character only shall be employed; but where all qualifications are equal, preference shall be given to citizens of the Cherokee Nation in such employment.

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SEC. 34. All moneys for carrying on the schools shall be appropriated by the Cherokee national council, not to exceed the amount of the Cherokee school fund; but if the council fail or refuse to make the necessary appropriations, the Secretary of the Interior may direct the use of a sufficient amount of the school fund to pay all necessary expenses for the efficient conduct of the schools, strict account therefor to be rendered to him and the principal chief.

SEC. 35. All accounts for expenditures in carrying on the schools shall be examined and approved by said supervisor, and also by the general superintendent of Indian schools in the Indian Territory, before payment thereof is made.

SEC. 36. The interest arising from the Cherokee orphan fund shall be used, under the direction of the Secretary of the Interior, for maintaining the Cherokee Orphan Asylum for the benefit of the Cherokee orphan children.

ROADS.

SEC. 37. Public highways or roads two rods in width, being one rod on each side of the section line, may be established along all section lines without any compensation being paid therefor, and all allottees, purchasers, and others shall take the title to such lands subject to this provision; and public highways or roads may be established elsewhere whenever necessary for the public good, the actual value of the land taken elsewhere than along section lines to be determined under the direction of the Secretary of the Interior while the tribal government continues and to be paid by the Cherokee Nation during that time; and if buildings or other improvements are damaged in consequence of the establishment of such public highways or roads, whether along section lines or elsewhere, such damages, during the continuance of the tribal government, shall be determined and paid for in the same manner.

TOWN SITES.

SEC. 38. The lands which may hereafter be set aside and reserved for town sites upon the recommendation of the Dawes Commission under the provisions of the Act of Congress approved May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty one), shall embrace such acreage as may be necessary for the present needs and reasonable prospective growth of such town sites, not to exceed six hundred and forty acres for each town site.

SEC. 39. Whenever any tract of land shall be set aside by the Secretary of the Interior for town-site purposes, as provided in said Act of May thirty-first, nineteen hundred, or by the terms of this Act, which is occupied at the time of such segregation by any member of the Cherokee Nation, such occupant shall be allowed to purchase any lot upon which he then has improvements other than fences, tillage, and temporary improvements, in accordance with the provisions of the Act of June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), or, if he so elects, the lot will be sold under rules and regulations to be prescribed by the Secretary of the Interior, and he shall be fully compensated for his improvements thereon out of the funds of the tribe arising from the sale of the town sites, the value of such improvements to be determined by a board of appraisers, one member of which shall be

appointed by the Secretary of the Interior, one by the chief executive of the tribe, and one by the occupant of the land, said board of appraisers to be paid such compensation for their services as may be determined by the Secretary of the Interior out of any appropriations for surveying, laying out, platting, and selling town sites.

SEC. 40. All town sites which may hereafter be set aside by the Secretary of the Interior on the recommendation of the Commission to the Five Civilized Tribes, under the provisions of the Act of Congress approved May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one), with the additional acreage added thereto, as well as all town sites set aside under the provisions of this Act having a population of less than two hundred, shall be surveyed, laid out, platted, appraised, and disposed of in like manner, and with like preference rights accorded to owners of improvements as other town sites in the Cherokee Nation are surveyed, laid out, platted, appraised, and disposed of under the Act of Congress of June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), as modified or supplemented by the Act of May thirty-first, nineteen hundred: *Provided*, That as to the town sites set aside as aforesaid the owner of the improvements shall be required to pay the full appraised value of the lot instead of the percentage named in said Act of June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five).

SEC. 41. Any person being in possession or having the right to the possession of any town lot or lots, as surveyed and platted under the direction of the Secretary of the Interior, in accordance with the Act of Congress approved May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one), the occupancy of which lot or lots was originally acquired under any town-site act of the Cherokee Nation, and owning improvements thereon, other than temporary buildings, fencing, or tillage, shall have the right to purchase the same at one-fourth of the appraised value thereof.

SEC. 42. Any person being in possession of, or having the right to the possession of, any town lot or lots, as surveyed and platted under the direction of the Secretary of the Interior, in accordance with the Act of Congress, approved May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one), the occupany of which lot or lots was originally acquired under any town-site act of the Cherokee Nation, and not having any improvements thereon, shall have the right to purchase the same at one-half of the appraised value thereof.

SEC. 43. Any citizen in rightful possession of any town lot having improvements thereon other than temporary buildings, fencing, and tillage, the occupancy of which has not been acquired under tribal laws, shall have the right to purchase same by paying one-half the appraised value thereof: *Provided*, That any other person in undisputed possession of any town lot having improvements thereon other than temporary buildings, fencing, and tillage, the occupancy of which has not been acquired under tribal laws, shall have the right to purchase such lot by paying the appraised value thereof.

SEC. 44. All lots not having thereon improvements other than temporary buildings, fencing, and tillage, the sale or disposition of which is not herein otherwise specifically provided for, shall be sold within

twelve months after appraisement, under the direction of the Secretary of the Interior, after due advertisement, at public auction, to the highest bidder, at not less than their appraised value.

SEC. 45. When the appraisement of any town lot is made and approved, the town-site commission shall notify the claimant thereof of the amount of appraisement, and he shall, within sixty days thereafter, make payment of ten per centum of the amount due for the lot, and four months thereafter he shall pay fifteen per centum additional, and the remainder of the purchase money he shall pay in three equal annual installments without interest: but if the claimant of any such lot fail to purchase same or make the first and second payments aforesaid or make any other payment within the time specified, the lot and improvements shall be sold at public auction to the highest bidder, under the direction of the Secretary of the Interior, at a price not less than its appraised value.

SEC. 46. When any improved lot shall be sold at public auction because of the failure of the person owning improvements thereon to purchase same within the time allowed in said Act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), said improvements shall be appraised by a committee, one member of which shall be selected by the owner of the improvements and one member by the purchaser of said lot; and in case the said committee is not able to agree upon the value of said improvements, the committee may select a third member, and in that event the determination of the majority of the committee shall control. Said committee of appraisement shall be paid such compensation for their services by the two parties in interest, share and share alike, as may be agreed upon, and the amount of said appraisement shall be paid by the purchaser of the lot to the owner of the improvements in cash within thirty days after the decision of the committee of appraisement.

SEC. 47. The purchaser of any unimproved town lot sold at public auction shall pay twenty-five per centum of the purchase money at the time of the sale, and within four months thereafter he shall pay twenty-five per centum additional, and the remainder of the purchase money he shall pay in two equal annual installments without interest.

SEC. 48. Such towns in the Cherokee Nation as may have a population of less than two hundred people not otherwise provided for, and which, in the judgment of the Secretary of the Interior, should be set aside as town sites, shall have their limits defined as soon as practicable after the approval of this Act in the same manner as provided for other town sites.

SEC. 49. The town authorities of any town site in said Cherokee Nation may select and locate, subject to the approval of the Secretary of the Interior, a cemetery within suitable distance from said town, to embrace such number of acres as may be deemed necessary for such purpose. The town-site commission shall appraise the same at its true value, and the town may purchase the same within one year from the approval of the survey by paying the appraised value. If any citizen have improvements thereon, said improvements shall be appraised by said town-site commission and paid for by the town: *Provided*, That lands already laid out by tribal authorities for cemeteries shall be included in the cemeteries herein provided for without cost to the towns, and the holdings of the burial lots therein now occupied for

such purpose shall in no wise be disturbed: *And provided further*, That any park laid out and surveyed in any town shall be duly appraised at a fair valuation, and the inhabitants of said town shall, within one year after the approval of the survey and the appraisement of said park by the Secretary of the Interior, pay the appraised value to the proper officer for the benefit of the tribe.

SEC. 50. The United States shall pay all expenses incident to surveying, platting, and disposition of town lots, and all allotments of lands made under the provisions of this plan of allotment, except where the town authorities may have been or may be duly authorized to survey and plat their respective towns at the expense of such towns.

SEC. 51. No taxes shall be assessed by any town government against any town lot remaining unsold, but taxes may be assessed against any town lot sold as herein provided.

SEC. 52. If the purchaser of any town lot fail to make payment of any sum when due, the same shall thereafter bear six per centum interest per annum until paid.

SEC. 53. All lots or parts of lots, not exceeding fifty by one hundred and fifty feet in size, upon which church houses and parsonages have been erected, and which are occupied as such at the time of appraisement, shall be conveyed gratuitously to the churches to which such improvements belong, and if such churches have inclosed other adjoining lots actually necessary for their use, they may purchase the same by paying the appraised value thereof.

SEC. 54. Whenever the chief executive of the Cherokee Nation fails or refuses to appoint a town-site commissioner for any town, or to fill any vacancy caused by the neglect or refusal of the town-site commissioners appointed by the chief executive to qualify or act, or otherwise, the Secretary of the Interior, in his discretion, may appoint a commissioner to fill the vacancy thus created.

SEC. 55. The purchaser of any town lot may at any time pay the full amount of the purchase money, and he shall thereupon receive title therefor.

SEC. 56. Any person may bid for and purchase any lot sold at public auction as herein provided.

SEC. 57. The United States may purchase in any town in the Cherokee Nation suitable lands for court-houses, jails, or other necessary public purposes for its use by paying the appraised value thereof, the same to be selected under the direction of the department for whose use such lands are needed, and if any person have improvements thereon the same shall be appraised in like manner as other town property, and shall be paid for by the United States.

TITLES.

SEC. 58. The Secretary of the Interior shall furnish the principal chief with blank patents necessary for all conveyances herein provided for, and when any citizen receives his allotment of land, or when any allotment has been so ascertained and fixed that title should under the provisions of this Act be conveyed, the principal chief shall thereupon proceed to execute and deliver to him a patent conveying all the right, title, and interest of the Cherokee Nation, and of all other citizens, in and to the lands embraced in his allotment certificate.

SEC. 59. All conveyances shall be approved by the Secretary of the

Interior, which shall serve as a relinquishment to the grantee of all the right, title, and interest of the United States in and to the lands embraced in his patent.

SEC. 60. Any allottee accepting such patent shall be deemed to assent to the allotment and conveyance of all the lands of the tribe as provided in this Act, and to relinquish all his right, title, and interest to the same, except in the proceeds of lands reserved from allotment.

SEC. 61. The acceptance of patents for minors and incompetents by persons authorized to select their allotments for them shall be deemed sufficient to bind such minors and incompetents as to the conveyance of all other lands of the tribe.

SEC. 62. All patents, when so executed and approved, shall be filed in the office of the Dawes Commission, and recorded in a book provided for the purpose, until such time as Congress shall make other suitable provision for record of land titles, without expense to the grantee, and such records shall have like effect as other public records.

MISCELLANEOUS.

SEC. 63. The tribal government of the Cherokee Nation shall not continue longer than March fourth, nineteen hundred and six.

SEC. 64. The collection of all revenues of whatsoever character belonging to the tribe shall be made by an officer appointed by the Secretary of the Interior, under rules and regulations to be prescribed by the said Secretary.

SEC. 65. All things necessary to carry into effect the provisions of this Act, not otherwise herein specifically provided for, shall be done under the authority and direction of the Secretary of the Interior.

SEC. 66. All funds of the tribe, and all moneys accruing under the provisions of this Act, shall be paid out under the direction of the Secretary of the Interior, and when required for per capita payments shall be paid directly to each individual by an appointed officer of the United States, under the direction of the Secretary of the Interior.

SEC. 67. The Secretary of the Interior shall cause to be paid all just indebtedness of said tribe existing at the date of the ratification of this Act which may have lawfully been contracted, and warrants therefor regularly issued upon the several funds of the tribe, as also warrants drawn by authority of law hereafter and prior to the dissolution of the tribal government, such payments to be made from any funds in the United States Treasury belonging to said tribe, and all such indebtedness of the tribe shall be paid in full before any pro rata distribution of the funds of the tribe shall be made. The Secretary of the Interior shall make such payments at the earliest time practicable and he shall make all needed rules and regulations to carry this provision into effect.

SEC. 68. Jurisdiction is hereby conferred upon the Court of Claims to examine, consider, and adjudicate, with a right of appeal to the Supreme Court of the United States by any party in interest feeling aggrieved at the decision of the Court of Claims, any claim which the Cherokee tribe, or any band thereof, arising under treaty stipulations, may have against the United States, upon which suit shall be instituted within two years after the approval of this Act; and also to examine, consider, and adjudicate any claim which the United States may have against said tribe, or any band thereof. The institution, prosecution,

or defense, as the case may be, on the part of the tribe or any band, of any such suit, shall be through attorneys employed and to be compensated in the manner prescribed in sections twenty-one hundred and three to twenty-one hundred and six, both inclusive, of the Revised Statutes of the United States, the tribe acting through its principal chief in the employment of such attorneys, and the band acting through a committee recognized by the Secretary of the Interior. The Court of Claims shall have full authority, by proper orders and process, to make parties to any such suit all persons whose presence in the litigation it may deem necessary or proper to the final determination of the matter in controversy, and any such suit shall, on motion of either party, be advanced on the docket of either of said courts and be determined at the earliest practicable time.

SEC. 69. After the expiration of nine months after the date of the original selection of an allotment by or for any citizen of the Cherokee tribe as provided in this Act, no contest shall be instituted against such selection, and as early thereafter as practicable patent shall issue therefor.

SEC. 70. Allotments may be selected and homesteads designated for minors by the father or mother, if citizens, or by a guardian, or curator, or the administrator having charge of their estate, in the order named; and for prisoners, convicts, aged and infirm persons, and soldiers and sailors of the United States on duty outside of the Indian Territory, by duly appointed agents under power of attorney; and for incompetents by guardians, curators, or other suitable persons akin to them; but it shall be the duty of said Commission to see that said selections are made for the best interests of such parties.

SEC. 71. Any allottee taking as his allotment lands located around the Cherokee National Male Seminary, the Cherokee National Female Seminary, or Cherokee Orphan Asylum which have not been reserved from allotment as herein provided, and upon which buildings, fences, or other property of the Cherokee Nation are located, such buildings, fences, or other property shall be appraised at the true value thereof and be paid for by the allottee taking such lands as his allotment, and the money to be paid into the Treasury of the United States to the credit of the Cherokee Nation.

SEC. 72. Cherokee citizens may rent their allotments when selected for a term not to exceed one year for grazing purposes only, and for a period not to exceed five years for agricultural purposes, but without any stipulation or obligation to renew the same; but leases for a period longer than one year for grazing purposes and for a period longer than five years for agricultural purposes and for mineral purposes may also be made with the approval of the Secretary of the Interior and not otherwise. Any agreement or lease of any kind or character violative of this section shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity. Cattle grazed upon leased allotments shall not be liable to any tribal tax, but when cattle are introduced into the Cherokee Nation and grazed on lands not selected as allotments by citizens the Secretary of the Interior shall collect from the owners thereof a reasonable grazing tax for the benefit of the tribe, and section twenty-one hundred and seventeen of the Revised Statutes of the United States shall not hereafter apply to Cherokee lands.

SEC. 73. The provisions of section thirteen of the Act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled "An Act for the protection of the people of the Indian Territory, and for other purposes," shall not apply to or in any manner affect the lands or other property of said tribe, and no Act of Congress or treaty provision inconsistent with this agreement shall be in force in said Nation except sections fourteen and twenty-seven of said last-mentioned Act, which shall continue in force as if this agreement had not been made.

SEC. 74. This Act shall not take effect or be of any validity until ratified by a majority of the whole number of votes cast by the legal voters of the Cherokee Nation in the manner following:

SEC. 75. The principal chief shall, within ten days after the passage of this Act by Congress, make public proclamation that the same shall be voted upon at a special election to be held for that purpose within thirty days thereafter, on a certain date therein named, and he shall appoint such officers and make such other provisions as may be necessary for holding such election. The votes cast at such election shall be forthwith duly certified as required by Cherokee law, and the votes shall be counted by the Cherokee national council, if then in session, and if not in session the principal chief shall convene an extraordinary session for the purpose, in the presence of a member of the Commission to the Five Civilized Tribes, and said member and the principal chief shall jointly make certificate thereof and proclamation of the result, and transmit the same to the President of the United States.

Approved, July 1, 1902.

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Supreme Court of the United States.

No. 275.—October Term, 1902.

Lone Wolf, Principal Chief of the Kiowas, et al., Appellants, *vs.* Ethan A. Hitchcock, Secretary of the Interior, et al.	Appeal from the Court of Appeals of the District of Columbia.

[January 5, 1903.]

In 1867 a treaty was concluded with the Kiowa and Comanche tribes of Indians, and such other friendly tribes as might be united with them, setting apart a reservation for the use of such Indians. By a separate treaty the Apache tribe of Indians was incorporated with the two former-named, and became entitled to share in the benefits of the reservation. (15 Stat. 581, 589.)

The first named treaty is usually called the Medicine Lodge treaty. By the sixth article thereof it was provided that heads of families might select a tract of land within the reservation, not exceeding 320 acres in extent, which should thereafter cease to be held in common, and should be for the exclusive possession of the Indian making the selection, so long as he or his family might continue to cultivate the land. The twelfth article of the treaty was as follows:

"Article 12. No treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force as against the said Indians, unless executed and signed by at least three-fourths of all the adult male Indians occupying the same, and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract of land selected by him as provided in article III (VI) of this treaty."

The three tribes settled under the treaties upon the described land. On October 6, 1892, 456 male adult members of the confederated tribes signed, with three commissioners representing the United States, an agreement concerning the reservation. The Indian agent, in a certificate appended to the agreement, represented that there were then 562 male adults in the three tribes. (Senate Ex. Doc. No. 27, 52d Congress, second session, page 17.) Four hundred and fifty-six male adults therefore constituted more than three-fourths of the certified number of total male adults in the three tribes. In form the agreement was a proposed treaty, the terms of which, in substance, provided for a surrender to the United States of the

rights of the tribes in the reservation, for allotments out of such lands to the Indians in severalty, the fee simple title to be conveyed to the allottees or their heirs after the expiration of twenty-five years; and the payment or setting apart for the benefit of the tribes of two million dollars as the consideration for the surplus of land over and above the allotments which might be made to the Indians. It was provided that sundry named friends of the Indians (among such persons being the Indian agent and an army officer) "should each be entitled to all the benefits, in land only, conferred under this agreement, the same as if members of said tribes." Eliminating 350,000 acres of mountainous land, the quantity of surplus lands, suitable for farming and grazing purposes was estimated at 2,150,000 acres. Concerning the payment to be made for these surplus lands, the commission, in their report to the President announcing the termination of the negotiations, said (Senate Ex. Doc. No. 17, second session, 52d Congress):

"In this connection it is proper to add that the commission agreed with the Indians to incorporate the following in their report, which is now done:

"The Indians upon this reservation seem to believe (but whether from an exercise of their own judgment or from the advice of others the commission cannot determine) that their surplus land is worth two and one-half million dollars, and Congress may be induced to give them that much for it. Therefore, in compliance with their request, we report that they desire to be heard through an attorney and a delegation to Washington upon that question, the agreement signed, however, to be effective upon ratification, no matter what Congress may do with their appeal for the extra half million dollars."

In transmitting the agreement to the Secretary of the Interior, the Commissioner of Indian Affairs said:

"The price paid, while considerably in excess of that paid to the Cheyennes and Arapahoes, seems to be fair and reasonable, both to the government and the Indians, the land being doubtless of better quality than that in the Cheyenne and Araphoe reservation."

Attention was directed to the provision in the agreement in favor of the Indian agent and an army officer, and it was suggested that to permit them to avail thereof would establish a bad precedent.

Soon after the signing of the foregoing agreement it was claimed by the Indians that their assent had been obtained by fraudulent misrepresentations of its terms by the interpreters, and it was asserted that the agreement should not be held binding upon the tribes because three-fourths of the adult male members had not assented thereto, as was required by the twelfth article of the Medicine Lodge treaty.

Obviously, in consequence of the policy embodied in section 2079 of the Revised Statutes, departing from the former custom of dealing with Indian affairs by treaty and providing for legislative action on such subjects,

various bills were introduced in both Houses of Congress designed to give legal effect to the agreement made by the Indians in 1892. These bills were referred to the proper committee, and before such committees the Indians presented their objections to the propriety of giving effect to the agreement. (H. R. Doc. No. 431, 55th Congress, second session.) In 1898 the Committee on Indian Affairs of the House of Representatives unanimously reported a bill for the execution of the agreement made with the Indians. The report of the committee recited that a favorable conclusion had been reached by the committee "after the fullest hearings from delegations of the Indian tribes and all parties at interest." (H. R. Doc. No. 419, first session, 56th Congress, p. 5.)

The bill thus reported did not exactly conform to the agreement as signed by the Indians. It modified the agreement by changing the time for making the allotments, and it also provided that the proceeds of the surplus lands remaining after allotments to the Indians should be held to await the judicial decision of a claim asserted by the Choctaw and Chickasaw tribes of Indians to the surplus lands. This claim was based upon a treaty made in 1866, by which the two tribes ceded the reservation in question, it being contended that the lands were impressed with a trust in favor of the ceding tribes, and that whenever the reservation was abandoned, so much of it as was not allotted to the confederated Indians of the Comanche, Kiowa and Apache tribes reverted to the Choctaws and Chickasaws.

The bill just referred to passed the House of Representatives on May 16, 1898. (31st Cong. Rec. p. 4947.) When the bill reached the Senate that body, on January 25, 1899, adopted a resolution calling upon the Secretary of the Interior for information as to whether the signatures attached to the agreement comprised three-fourths of the male adults of the tribes. In response the Secretary of the Interior informed the Senate, under date of January 28, 1899, that the records of the department "failed to show a census of these Indians for the year 1892," but that "from a roll used in making a payment to them in January and February, 1893, it appeared that there were 725 males over eighteen years of age, of whom 639 were twenty-one years and over." The Secretary further called attention to the fact that by the agreement of 1892 a right of selection was conferred upon each member of the tribes over eighteen years of age, and observed:

"If 18 years and over be held to be the legal age of those who were authorized to sign the agreement, the number of persons who actually signed was 87 less than three-fourths of the adult male membership of the tribes; and if 21 years be held to be the minimum age, then 23 less than three-fourths signed the agreement. In either event, less than three-fourths of the male adults appear to have so signed."

With this information before it the bill was favorably reported by the Committee on Indian Affairs of the Senate, but did not pass that body.

At the first session of the following Congress (the Fifty-sixth) bills were introduced in both the Senate and House of Representatives substantially like that which has just been noticed. (Senate, 1352; H. R. 905.)

In the meanwhile, about October, 1899, the Indians had, at a general council at which 571 male adults of the tribes purported to be present, protested against the execution of the provisions of the agreement of 1892, and adopted a memorial to Congress, praying that that body should not give effect to the agreement. This memorial was forwarded to the Secretary of the Interior by the Commissioner of Indian Affairs with lengthy comments, pointing out the fact that the Indians claimed that their signatures to the agreement had been procured by fraud and that the legal number of Indians had not signed the agreement, and that the previous bills and bills then pending contemplated modification of the agreement in important particulars without the consent of the Indians. This communication from the Commissioner of Indian Affairs, together with the memorial of the Indians, were transmitted by the Secretary of the Interior to Congress. (Senate Doc. No. 76; H. R. Doc. No. 333; first session, Fifty-sixth Congress.) Attention was called to the fact that although by the agreement of October 6, 1892, one-half of each allotment was contemplated to be agricultural land, there was only sufficient agricultural land in the entire reservation to average thirty acres per Indian. After setting out the charges of fraud and complaints respecting the proposed amendments designed to be made to the agreement, as above stated, particular complaint was made of the provision in the agreement of 1892 as to allotments in severalty among the Indians of lands for agricultural purposes. After reciting that the tribal lands were not adapted to such purposes, but were suitable for grazing, the memorial proceeded as follows:

"We submit that the provision for lands to be allotted to us under this treaty are insufficient, because it is evident we cannot, on account of the climate of our section, which renders the maturity of crops uncertain, become a successful farming community; that we, or whoever else occupies these lands, will have to depend upon the cattle industry for revenue and support. And we therefore pray, if we cannot be granted the privilege of keeping our reservation under the treaty made with us in 1868, and known as the Medicine Lodge treaty, that authority be granted for the consideration of a new treaty that will make the allowance of land to be allotted to us sufficient for us to graze upon it enough stock cattle, the increase from which we can market for support of ourselves and families."

With the papers just referred to before it, the House Committee on Indian Affairs, in February, 1900, favorably reported a bill to give effect to the agreement of 1892.

On January 19, 1900, an act was passed by the Senate, entitled "An act to ratify an agreement made with the Indians of the Fort Hall Indian reser-

vation in Idaho, and making an appropriation to carry the same into effect." In February, 1900, the House Committee on Indian Affairs, having before it the memorial of the Indians transmitted by the Secretary of the Interior, and also having for consideration the Senate bill just alluded to, reported that bill back to the House favorably, with certain amendments. (H. R. Doc. No. 419, 56th Congress, first session.) One of such amendments consisted in adding to the bill in question, as section 6, a provision to execute the agreement made with the Kiowa, Comanche and Apache Indians in 1892. Although the bill thus reported embodied the execution of the agreement last referred to, the title of the bill was not changed, and consequently referred only to the execution of the agreement made with the Indians of the Fort Hall reservation in Idaho. The provisions thus embodied in section 6 of the bill in question substantially conformed to those contained in the bill which had previously passed the House, except that the previous enactment on this subject was changed so as to do away with the necessity for making to each Indian one-half of his allotment in agricultural land and the other half in grazing land. In addition a clause was inserted in the bill providing for the setting apart of a large amount of grazing land to be used in common by the Indians. The provision in question was as follows:

"That in addition to the allotment of lands to said Indians as provided for in this agreement, the Secretary of the Interior shall set aside for the use in common for said Indian tribes four hundred and eighty thousand acres of grazing lands, to be selected by the Secretary of the Interior, either in one or more tracts as will best subserve the interest of said Indians."

The provision of the agreement in favor of the Indian agent and army officer was also eliminated.

The bill, moreover, exempted the money consideration for the surplus lands from all claims for Indian depredations, and expressly provided that in the event the claim of the Choctaws and Chickasaws was ultimately sustained, the consideration referred to should be subject to the further action of Congress. In this bill as in previous ones provision was made for allotments to the Indians, the opening of the surplus land for settlement, &c. The bill became a law by concurrence of the Senate in the amendments adopted by the House as just stated.

Thereafter, by acts approved on January 4, 1901, (ch. 8, 31 Stat. 727,) March 3, 1901, (ch. 832, 31 Stat. 1078,) and March 3, 1901, (ch. 846, 31 Stat. 1093,) authority was given to extend the time for making allotments and opening of the surplus land for settlement for a period not exceeding eight months from December 6, 1900; appropriations were made for surveys in connection with allotments and setting apart of grazing lands; and authority was conferred to establish counties and county seats,

townsites, &c., and proclaim the surplus lands open for settlement by white people.

On June 6, 1901, a bill was filed on the equity side of the Supreme Court of the District of Columbia, wherein Lone Wolf (one of the appellants herein) was named as complainant, suing for himself as well as for all other members of the confederated tribes of the Kiowa, Comanche and Apache Indians, residing in the Territory of Oklahoma. The present appellees (the Secretary of the Interior, the Commissioner of Indian Affairs and the Commissioner of the General Land Office) were made respondents to the bill. Subsequently, by an amendment to the bill, members of the Kiowa, Comanche and Apache tribes were joined with Lone Wolf as parties complainant.

The bill recited the establishing and occupancy of the reservation in Oklahoma by the confederated tribes of Kiowas, Comanches and Apaches, the signing of the agreement of October 6, 1892, and the subsequent proceedings which have been detailed, culminating in the passage of the act of June 6, 1900, and the acts of Congress supplementary to said act. In substance it was further charged in the bill that the agreement had not been signed as required by the Medicine Lodge treaty, that is, by three-fourths of the male adult members of the tribe, and that the signatures thereto had been obtained by fraudulent misrepresentations and concealment, similar to those recited in the memorial signed at the 1899 council. In addition to the grievance previously stated in the memorial, the charge was made that the interpreters falsely represented, when the said treaty was being considered by the Indians, that the treaty provided "for the sale of their surplus lands at some time in the future at the price of $2.50 per acre;" whereas, in truth and in fact, "by the terms of said treaty, only $1.00 an acre is allowed for said surplus lands," which sum, it was charged, was an amount far below the real value of said lands. It was also averred that portions of the signed agreement had been changed by Congress without submitting such changes to the Indians for their consideration. Based upon the foregoing allegations, it was alleged that so much of said act of Congress of June 6, 1900, and so much of said acts supplementary thereto and amendatory thereof as provided for the taking effect of said agreement, the allotment of certain lands mentioned therein to members of said Indian tribes, the surveying, laying out, and platting townsites and locating county seats on said lands, and the ceding to the United States and the opening to settlement by white men of two million acres of said lands, were enacted in violation of the property rights of the said Kiowa, Comanche and Apache Indians, and if carried into effect would deprive said Indians of their lands without due process of law, and that said parts of said acts were contrary to the Constitution of the United States, and were void, and conferred no right, power or duty upon the

respondents to do or perform any of the acts or things enjoined or required by the acts of Congress in question. Alleging the intention of the respondents to carry into effect the aforesaid claimed unconstitutional and void acts, and asking discovery by answers to interrogatories propounded to the respondents, the allowance of a temporary restraining order, and a final decree awarding a perpetual injunction was prayed, to restrain the commission by the respondents of the alleged unlawful acts by them threatened to be done. General relief was also prayed.

On January 6, 1901, a rule to show cause why a temporary injunction should not be granted was issued. In response to this rule an affidavit of the Secretary of the Interior was filed, in which in substance it was averred that the complainant (Lone Wolf) and his wife and daughter had selected allotments under the act of June 6, 1900, and the same had been approved by the Secretary of the Interior and that all other members of the tribes, excepting twelve, had also accepted and retained allotments in severalty, and that the greater part thereof had been approved before the bringing of this suit. It was also averred that the 480,000 acres of grazing land provided to be set apart, in the act of June 6, 1900, for the use by the Indians in common, had been so set apart prior to the institution of the suit, "with the approval of a council composed of chiefs and headmen of said Indians." Thereupon an affidavit verified by Lone Wolf was filed, in which in effect he denied that he had accepted an allotment of lands under the act of June 6, 1900, and the acts supplementary to and amendatory thereof. Thereafter, on June 17, 1901, leave was given to amend the bill and the same was amended, as heretofore stated, by adding additional parties complainant and by providing a substituted first paragraph of the bill, in which was set forth, among other things, that the three tribes, at a general council held on June 7, 1901, had voted to institute all legal and other proceedings necessary to be taken, to prevent the carrying into effect of the legislation complained of.

The Supreme Court of the District on June 21, 1901, denied the application for a temporary injunction. The cause was thereafter submitted to the court on a demurrer to the bill as amended. The demurrer was sustained, and the complainants electing not to plead further, on June 26, 1901, a decree was entered in favor of the respondents. An appeal was thereupon taken to the Court of Appeals of the District. While this appeal was pending, the President issued a proclamation, dated July 4, 1901, (32 Stat. Appx. Proclamations, 11,) in which it was ordered that the surplus lands ceded by the Comanche, Kiowa and Apache and other tribes of Indians should be opened to entry and settlement on August 6, 1901. Among other things, it was recited in the proclamation that all the conditions required by law to be performed prior to the opening of the lands to settlement and entry had been performed. It was also therein

recited that, in pursuance of the act of Congress ratifying the agreement, allotments of land in severalty had been regularly made to each member of the Comanche, Kiowa and Apache tribes of Indians; the lands occupied by religious societies or other organizations for religious or educational work among the Indians had been regularly allotted and confirmed to such societies and organizations, respectively; and the Secretary of the Interior, out of the lands ceded by the agreement, had regularly selected and set aside for the use in common for said Comanche, Kiowa and Apache tribes of Indians, four hundred and eighty thousand acres of grazing lands.

The Court of Appeals (without passing on a motion which had been made to dismiss the appeal) affirmed the decree of the court below, and overruled a motion for reargument. (19 App. D. C. ——.) An appeal was allowed, and the decree of affirmance is now here for review.

Mr. Justice WHITE, after making the foregoing statement, delivered the opinion of the Court.

By the sixth article of the first of the two treaties referred to in the preceding statement, proclaimed on August 25, 1868, (15 Stat. 581,) it was provided that heads of families of the tribes affected by the treaty might select, within the reservation, a tract of land of not exceeding 320 acres in extent, which should thereafter cease to be held in common, and should be for the exclusive possession of the Indian making the selection, so long as he or his family might continue to cultivate the land. The twelfth article reads as follows:

"Article 12. No treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force as against the said Indians, unless executed and signed by at least three-fourths of all the adult male Indians occupying the same, and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract of land selected by him as provided in article III (VI) of this treaty."

The appellants base their right to relief on the proposition that by the effect of the article just quoted the confederated tribes of Kiowas, Comanches and Apaches were vested with an interest in the lands held in common within the reservation, which interest could not be divested by Congress in any other mode than that specified in the said twelfth article, and that as a result of the said stipulation the interest of the Indians in the common lands fell within the protection of the Fifth Amendment to the Constitution of the United States, and such interest—indirectly at least—came under the control of the judicial branch of the government. We are unable to yield our assent to this view.

The contention in effect ignores the status of the contracting Indians and the relation of dependency they bore and continue to bear towards the

government of the United States. To uphold the claim would be to adjudge that the indirect operation of the treaty was to materially limit and qualify the controlling authority of Congress in respect to the care and protection of the Indians, and to deprive Congress, in a possible emergency, when the necessity might be urgent for a partition and disposal of the tribal lands, of all power to act, if the assent of the Indians could not be obtained.

Now, it is true that in decisions of this court, the Indian right of occupancy of tribal lands, whether declared in a treaty or otherwise created, has been stated to be sacred, or, as sometimes expressed, as sacred as the fee of the United States in the same lands. *Johnson* v. *McIntosh*, (1823) 8 Wheat. 543, 574; *Cherokee Nation* v. *Georgia*, (1831) 5 Pet. 1, 48; *Worcester* v. *Georgia*, (1832) 6 Pet. 515, 581; *United States* v. *Cook*, (1873) 19 Wall. 591, 592; *Leavenworth &c. R. R. Co.* v. *United States*, (1875) 92 U. S. 733, 755; *Beecher* v. *Wetherby*, (1877) 95 U. S. 525. But in none of these cases was there involved a controversy between Indians and the government respecting the power of Congress to administer the property of the Indians. The questions considered in the cases referred to, which either directly or indirectly had relation to the nature of the property rights of the Indians, concerned the character and extent of such rights as respected States or individuals. In one of the cited cases it was clearly pointed out that Congress possessed a paramount power over the property of the Indians, by reason of its exercise of guardianship over their interests, and that such authority might be implied, even though opposed to the strict letter of a treaty with the Indians. Thus, in *Beecher* v. *Wetherby*, (95 U. S. 525,) discussing the claim that there had been a prior reservation of land by treaty to the use of a certain tribe of Indians, the court said (p. 525):

"But the right which the Indians held was only that of occupancy. The fee was in the United States, subject to that right, and could be transferred by them whenever they chose. The grantee, it is true, would take only the naked fee, and could not disturb the occupancy of the Indians; that occupancy could only be interfered with or determined by the United States. It is to be presumed that in this matter the United States would be governed by such considerations of justice as would control a Christian people in their treatment of an ignorant and dependent race. Be that as it may, the propriety or justice of their action towards the Indians with respect to their lands is a question of governmental policy, and is not a matter open to discussion in a controversy between third parties, neither of whom derives title from the Indians."

Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the government. Until the year 1871 the policy was pursued of dealing with the Indian tribes by means of treaties, and, of course, a moral

obligation rested upon Congress to act in good faith in performing the stipulations entered into on its behalf. But, as with treaties made with foreign nations, (*Chinese Exclusion Cases*, 130 U. S. 581, 600,) the legislative power might pass laws in conflict with treaties made with the Indians. (*Thomas* v. *Gay*, 169 U. S. 264, 270; *Ward* v. *Race Horse*, 163 U. S. 504, 511; *Spalding* v. *Chandler*, 160 U. S. 394, 405; *Missouri, Kansas & Texas Ry. Co.* v. *Roberts*, 152 U. S. 114, 117; *The Cherokee Tobacco*, 11 Wall. 616.)

The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the government in disregarding the stipulations of the treaty, but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians it was never doubted that the *power* to abrogate existed in Congress, and that in a contingency such power might be availed of from considerations of governmental policy, particularly if consistent with perfect good faith towards the Indians. In *United States* v. *Kagama*, (1885) 118 U. S. 375, speaking of the Indians, the court said (p. 382):

"After an experience of a hundred years of the treaty-making system of government Congress has determined upon a new departure—to govern them by acts of Congress. This is seen in the act of March 3, 1871, embodied in § 2079 of the Revised Statutes: 'No Indian nation or tribe, within the territory of the United States, shall be acknowledged or recognized as an independent nation, tribe or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March third, eighteen hundred and seventy-one, shall be hereby invalidated or impaired.'"

In upholding the validity of an act of Congress which conferred jurisdiction upon the courts of the United States for certain crimes committed on an Indian reservation within a State, the court said (p. 383):

"It seems to us that this is within the competency of Congress. These Indian tribes *are* the wards of the nation. They are communities *dependent* on the United States. Dependent largely for their daily food. Dependent for their political rights. They owe no allegiance to the States, and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the Federal government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the executive and by Congress, and by this court, whenever the question has arisen.

* * * * * *

"The power of the general government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their

protection, as well as to the safety of those among whom they dwell. It must exist in that government, because it never has existed anywhere else, because the theater of its exercise is within the geographical limits of the United States, because it has never been denied, and because it alone can enforce its laws on all the tribes."

That Indians who had not been fully emancipated from the control and protection of the United States are subject, at least so far as the tribal lands were concerned, to be controlled by direct legislation of Congress, is also declared in *Choctaw Nation* v. *United States*, (119 U. S. 1, 27,) and *Stephens* v. *Choctaw Nation*, (174 U. S. 445, 485.)

In view of the legislative power possessed by Congress over treaties with the Indians and Indian tribal property, we may not specially consider the contentions pressed upon our notice that the signing by the Indians of the agreement of October 6, 1892, was obtained by fraudulent misrepresentations and concealment, that the requisite three-fourths of adult male Indians had not signed, as required by the twelfth article of the treaty of 1867, and that the treaty as signed had been amended by Congress without submitting such amendments to the action of the Indians, since all these matters, in any event, were solely within the domain of the legislative authority and its action is conclusive upon the courts.

The act of June 6, 1900, which is complained of in the bill, was enacted at a time when the tribal relations between the confederated tribes of Kiowas, Comanches and Apaches still existed, and that statute and the statutes supplementary thereto dealt with the disposition of tribal property and purported to give an adequate consideration for the surplus lands not allotted among the Indians or reserved for their benefit. Indeed, the controversy which this case presents is concluded by the decision in *Cherokee Nation* v. *Hitchcock*, (—— U. S. ——,) decided at this term, where it was held that full administrative power was possessed by Congress over Indian tribal property. In effect, the action of Congress now complained of was but an exercise of such power, a mere change in the form of investment of Indian tribal property, the property of those who, as we have held, were in substantial effect the wards of the government. We must presume that Congress acted in perfect good faith in the dealings with the Indians of which complaint is made, and that the legislative branch of the government exercised its best judgment in the premises. In any event, as Congress possessed full power in the matter, the judiciary cannot question or inquire into the motives which prompted the enactment of this legislation. If injury was occasioned, which we do not wish to be understood as implying, by the use made by Congress of its power, relief must be sought by an appeal to that body for redress and not to the courts. The legislation in question was constitutional, and the demurrer to the bill was therefore rightly sustained.

The motion to dismiss does not challenge jurisdiction over the subject matter. Without expressly referring to the propositions of fact upon which it proceeds, suffice it to say that we think it need not be further adverted to, since, for the reasons previously given and the nature of the controversy, we think the decree below should be affirmed.

And it is so ordered.

Mr. Justice HARLAN concurs in the result.

True copy.

Test:

Clerk Supreme Court, U. S.